11–9–94
Vol. 59 No. 216

federal register

Wednesday
November 9, 1994

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(ISSN 0097–6326)

11–9–94
Vol. 59 No. 216
Pages 55807–55984

federal register

Wednesday
November 9, 1994

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WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
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Contents

Federal Register

Vol. 59, No. 216

Wednesday, November 9, 1994

Agricultural Marketing Service
RULES
Peanuts, domestically produced, 55808–55810

Agriculture Department
See Agricultural Marketing Service
See Forest Service
See Rural Telephone Bank
NOTICES
Agency information collection activities under OMB review, 55830

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Nevada, 55833

Coast Guard
PROPOSED RULES
Vessel identification system:
Expanded hull identification number and certificates of origin requirements Workshop, 55823–55824
NOTICES
Great Lakes icebreaking requirements; review and comment request, 55906–55907

Commerce Department
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 55833–55834

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Indonesia, 55834–55836
Sri Lanka, 55834

Commodity Futures Trading Commission
NOTICES
Meetings; Sunshine Act, 55908

Consumer Product Safety Commission
NOTICES
Settlement agreements:
Concord Enterprises, Inc., 55836–55838

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Johnson Matthey, Inc., 55856–55857

Employment and Training Administration
NOTICES
Meetings:
Apprenticeship Federal Committee, 55857

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air programs:
Stratospheric ozone protection—
Refrigerant recycling, 55912–55927
Clean Air Act:
State operating permits programs—
Washington, 55813–55820
PROPOSED RULES
Air pollution control; new motor vehicles and engines:
Gasoline spark-ignition and diesel compression-ignition marine engines; emission standards, 55930–55966
Air quality implementation plans; approval and promulgation; various States:
Connecticut, 55824–55826
NOTICES
Agency information collection activities under OMB review, 55843–55844

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Class D airspace, 55810–55811

Federal Communications Commission
PROPOSED RULES
Radio services, special:
Amateur services—
Visiting foreign amateur operators; licensing procedure; termination, 55828–55829

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Grand River Dam Authority, 55841–55842
Hydroelectric applications, 55842–55843
Applications, hearings, determinations, etc.:
Acme Power Marketing, Inc., 55840
Algonquin Gas Transmission Co., 55839
Iroquois Gas Transmission System, L.P., 55840–55841
NorAm Gas Transmission Co., 55839
Texas Eastern Transmission Corp., 55840
Transcontinental Gas Pipe Line Corp., 55838, 55841
Trunkline Gas Co., 55838
Williston Basin Interstate Pipeline Co., 55839–55840

Federal Maritime Commission
PROPOSED RULES
Marine carriers in domestic offshore commerce:
Coloading practices by non-vessel operating common carriers; shipper affiliate access to service contracts, 55826–55828

Federal Railroad Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Next generation high-speed rail program, 55907

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 55908–55909

Applications, hearings, determinations, etc.:
Banterra Corp., 55844
FCNB Corp. et al., 55844

Federal Trade Commission
NOTICES
Competition and consumer protection order duration; policy statement and comment request, 55844–55845

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 55851–55852
Environmental statements; availability, etc.:
Incidental take permits—
Barton Creek Development, Travis County, TX; golden-cheeked warbler, 55852

Food and Drug Administration
NOTICES
Debarment orders:
Copanos, John D., 55846–55847
Harmonisation International Conference; guidelines availability:
Dose-response information to support drug registration, 55972–55976
Medical devices; premarket approval:
Sonic Accelerated Fracture Healing System (SAFHS), 55847–55848

Forest Service
NOTICES
Appealable decisions; legal notice:
Southern region, 55830–55833

Health and Human Services Department
See Food and Drug Administration
See National Institutes of Health
NOTICES
Privacy Act:
Systems of records, 55845–55846

Housing and Urban Development Department
NOTICES
Grant and cooperative agreement awards:
Public and Indian housing—
Crime prevention through environmental design program, 55849–55850
Public housing resident patrol training of trainers and technical assistance program, 55849

Immigration and Naturalization Service
RULES
Nonimmigrant classes:
Temporary alien workers seeking H–1B, O and P classifications
Correction, 55910

Indian Affairs Bureau
NOTICES
Tribal-State Compacts approval; Class III (casino) gambling:
Choctaw Indians, MS, 55970
Tonkawa Tribe, OK, 55968

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau

International Trade Commission
NOTICES
Import investigations
Drawer slides from—
China, 55852–55853
Import investigations:
Diltiazem hydrochloride and diltiazem preparations, 55854
Disposable lighters from—
Thailand, 55853–55854
Lamb meat—
Competitive conditions affecting U.S. and foreign lamb industries, 55854–55855
Microsphere adhesives, process for making same, including self-stick repositionable notes, 55855
Wheel inserts from—
Taiwan, 55856

Interstate Commerce Commission
NOTICES
Environmental statements; availability, etc.:
Atchison, Topeka & Santa Fe Railway Co. et al., 55856

Justice Department
See Drug Enforcement Administration
See Immigration and Naturalization Service

Labor Department
See Employment and Training Administration
See Veterans Employment and Training, Office of Assistant Secretary
See Workers' Compensation Programs Office

Land Management Bureau
RULES
Public land orders:
Arizona, 55821
Wyoming, 55820–55821
NOTICES
Closure of public lands:
Colorado, 55850–55851
Realty actions; sales, leases, etc.:
Oregon, 55851

Library of Congress
RULES
Procedures and services:
Name, seal, or logo use; credit and recognition policy, 55811–55813

National Aeronautics and Space Administration
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Pacific Scientific Co., 55859
Veatronics Corp., 55859

National Institutes of Health
NOTICES
Meetings:
Research Grants Division special emphasis panels, 55848–55849

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 55822
Summer flounder; correction, 55821–55822

Tuna, Atlantic bluefin fisheries, 55821

National Science Foundation
NOTICES
Agency information collection activities under OMB review, 55860
Meetings; Sunshine Act, 55909

Nuclear Regulatory Commission
NOTICES
Agency information collection activities under OMB review, 55860
Environmental statements; availability, etc.:
Illinois Power Co. et al., 55864–55865
Philadelphia Electric Co., 55863–55864
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 55865–55900
Petitions; Director's decisions:
Southern California Edison Co. et al., 55900–55901
Regulatory guides; issuance, availability, and withdrawal, 55901
Applications, hearings, determinations, etc.:
Baltimore Gas & Electric Co., 55861
Commonwealth Edison Co., 55860–55861
Old Forge Testing Co., 55862–55863

Personnel Management Office
RULES
Voluntary separation incentive payments repayment; waiver, 55807–55808

Presidential Documents
PROCLAMATIONS
Special observances:
American Indian Heritage Month, National (Proc. 6756), 55983–55984
Women Veterans Recognition Week, National (Proc. 6755), 55981
ADMINISTRATIVE ORDERS
Foreign Operations, Export Financing, and Related Programs Appropriations Act; memorandum to Secretary of State (Presidential Determination No. 95–2 of November 1, 1994), 55979

Public Health Service
See Food and Drug Administration
See National Institutes of Health

Railroad Retirement Board
NOTICES
Agency information collection activities under OMB review, 55901
Meetings; Sunshine Act, 55909

Rural Telephone Bank
NOTICES
Meetings; Sunshine Act, 55908

Securities and Exchange Commission
NOTICES
Investment companies; deregistration:
Jupiter National, Inc., 55905
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 55905–55906
Applications, hearings, determinations, etc.:
Action Performance Companies, Inc., 55902
PMC Capital, Inc., 55904–55905
TSX Corp., 55902
Weatherford International Inc., 55902
Woodward Funds, 55902–55904

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Railroad Administration

Treasury Department
RULES
Government Securities Act; implementation Correction, 55910

Veterans Employment and Training, Office of Assistant Secretary
NOTICES
Meetings:
Veterans' Employment and Training Advisory Committee, 55857–55858

Workers' Compensation Programs Office
NOTICES
Privacy Act:
Computer matching programs, 55858–55859

Separate Parts In This Issue

Part II
Environmental Protection Agency, 55912–55927

Part III
Environmental Protection Agency, 55930–55966

Part IV
Department of the Interior, Bureau of Indian Affairs, 55968

Part V
Department of the Interior, Bureau of Indian Affairs, 55970

Part VI
Department of Health and Human Services, Food and Drug Administration, 55972–55976

Part VII
The President, 55977–55984

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

6755.....55981
6756.....55983

Administrative Orders:

Presidential Determinations:
No. 95–2 of November 1, 1994.....55979

5 CFR

576.....55807

7 CFR

997.....55808

8 CFR

214.....55910

14 CFR

71.....55810

17 CFR

405.....55910

33 CFR

Proposed Rules:

181.....55823

36 CFR

701.....55811

40 CFR

70.....55813
82.....55912

Proposed Rules:

52.....55824
89.....55930
91.....55930

43 CFR

Public Land Orders:

7100.....55820
7101.....55821

46 CFR

Proposed Rules:

514.....55826
580.....55826
581.....55826

47 CFR

Proposed Rules:

97.....55828

50 CFR

285.....55821
625.....55821
675.....55822

Rules and Regulations

Federal Register
Vol. 59, No. 216
Wednesday, November 9, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 576

RIN 3206–AG20

Waiver of Repayment of Voluntary Separation Incentive Payments

AGENCY: Office of Personnel Management.

ACTION: Interim rules with request for comments.

SUMMARY: The Federal Workforce Restructuring Act of 1994, Public Law 103–226, enacted March 30, 1994, generally requires that an employee who accepts a voluntary separation incentive payment must repay the entire amount of the payment to the agency that paid the payment if the employee is reemployed by the Federal Government, in either a temporary or permanent status, within 5 years following the effective date of separation on which the payment was based. The payment must also be repaid if the employee accepts a personal services contract with the Federal Government within the 5-year period. The Act allows Executive agencies to request waivers of repayment from the Office of Personnel Management if the individual the agency wants to reemploy possesses unique abilities and is the only qualified applicant available for the position. These regulations implement this waiver authority.

DATES: Interim rules effective on November 9, 1994. Written comments will be considered if received no later than January 9, 1995.

ADDRESSES: Send or deliver written comments to Leonard R. Klein, Associate Director, Career Entry Group, Room 6F08, 1900 E Street, NW, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Betty Pickering of the Workforce Restructuring Office, Career Entry Group, on 202–606–0960 or fax 202–606–2329.

SUPPLEMENTARY INFORMATION: The Federal Workforce Restructuring Act of 1994, Public Law 103–226, enacted March 30, 1994, authorizes the payment of voluntary separation incentive payments to employees of executive branch agencies.

Public Law 103–226 does not authorize the Department of Defense, the Central Intelligence Agency, or the General Accounting Office to pay voluntary separation incentive payments to their employees since they have separate voluntary separation incentive program authorities. However, Public Law 103–226 covers the Department of Defense and the Central Intelligence Agency under the provisions dealing with employee repayment of voluntary separation incentive payments on reemployment with the Federal Government. The provisions dealing with employee repayment of voluntary separation incentive payments on reemployment do not apply to the General Accounting Office.

Public Law 103–226 requires an employee who receives a separation incentive payment on or after March 30, 1994, from any executive branch agency, including the Department of Defense and the Central Intelligence Agency, to repay the entire amount, including all deductions for taxes, etc., if reemployed in the Federal Government of the United States within 5 years of the separation date. This requirement applies to any employment, of any length, in any entity of the Federal Government of the United States, including the United States Postal Service, the White House, and non-appropriated fund activities. Employees, except employees of the Department of Defense, who receive a voluntary separation incentive payment and accept employment with the Federal Government under a personal services contract within 5 years of the date of separation must also repay the entire amount of the incentive payment.

The statute establishes specific limited conditions under which repayment of the voluntary separation incentive payment may be waived. If the individual is to be reemployed by an Executive agency, the Director of the Office of Personnel Management may waive repayment. For reemployment in the Legislative branch, the head of the organization or the appointing official may waive the repayment. For reemployment in the Judicial branch, the Director of the Administrative Office of the United States Courts has waiver authority. In all cases, a waiver is permitted if the individual possesses unique abilities and is the only qualified applicant available for the position. The Office of Personnel Management does not have authority to approve waivers of repayment for individuals who accept personal service contracts, or for individuals reemployed in the Legislative or Judicial branches of the Federal Government. These regulations, therefore, apply only to individuals who are otherwise subject to the reemployment provision of the Federal Workforce Restructuring Act and have accepted reemployment with the executive branch agencies.

Reemployment and Waivers of Repayment

The Office of Personnel Management's specific criteria for waiving repayment of a separation incentive payment are similar to criteria used for waiving reduction in salary or retirement pay for reemployed annuitants in that waivers will be approved in response to exceptional recruiting difficulty. Requests for waivers must be submitted to the Office of Personnel Management by the agency head or a designee at the agency or departmental headquarters level. Two special provisions reflect the intent of Public Law 103–226.

If the employee will be reemployed in the same agency, the request for a waiver must show that the recruiting need could not have been forseen before the employee's separation. An agency should not need to rehire employees to whom it pays separation incentives since Public Law 103–226 gives agencies authority to control separations from critical or hard-to-fill positions. The Office of Personnel Management will approve waivers of repayment for reemployment in the same agency only in rare and unusual circumstances.

The law authorizes waivers of repayment only for reemployment in exceptionally hard-to-fill positions. Therefore, any waiver approved by the Office of Personnel Management will apply to a specific position and the

employee appointed to it may not be reassigned during the 5-year period following separation unless the employee repays the separation incentive or the Office of Personnel Management approves a new waiver.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking because the statutory basis for these regulations (Pub. L. 103–226) was effective March 30, 1994, and it would be contrary to the public interest to delay implementation of rules covering reemployment and waivers of repayment. For the same reasons, and pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to waive the delay in effective date and make these regulations effective in less than 30 days.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

List of Subjects in 5 CFR Part 576

Government employees, wages.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, the Office of Personnel Management is adding a new Part 576 to title 5, Code of Federal Regulations, as follows:

PART 576—WAIVER OF REPAYMENT OF VOLUNTARY SEPARATION INCENTIVE PAYMENTS

Subpart A—Reemployment and Waiver of Repayment

Sec.

576.101 Repayment requirement.
576.102 Requesting Office of Personnel Management approval for waiver of repayment.

Authority: 5 U.S.C. 2101 note.

Subpart A—Reemployment and Waiver of Repayment

§ 576.101 Repayment requirement.

(a) *Who is covered.* This subpart covers any executive agency employee who received a voluntary separation incentive payment on or after March 30, 1994, including employees of the Department of Defense and Central Intelligence Agency.

(b) *What is covered.* This subpart covers reemployment of any duration, under any authority, in the Federal Government of the United States, within 5 years of the date of the separation on which payment of an incentive is based.

(c) *What is required.* The employee must repay the entire amount of the voluntary separation incentive payment, including all deductions for taxes, etc., to the agency that made the payment. Repayment will be made as provided in 5 U.S.C. 5514, as implemented in part 550, subpart K, of this chapter, or other appropriate authority.

(d) *Exception to the repayment requirement.* If the individual accepts reemployment with an Executive agency, the Office of Personnel Management may waive repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position. Each waiver must be approved individually, as provided in § 576.102 of this part. Waivers of repayment are not required for individuals who work as unpaid volunteers for the Federal Government.

§ 576.102 Requesting Office of Personnel Management approval for waiver of repayment.

(a) *Request by agency head.* The head of an Executive agency may request the Office of Personnel Management to approve a waiver of repayment for an individual when the agency has determined that the individual involved possesses unique abilities and is the only qualified applicant available for the position. Authority to submit such a request may not be redelegated to an official below the agency's headquarters level (or, in the case of the Department of Defense, to an official below the headquarters level of the military department or Defense agency).

(b) *Content of requests.* Each request must:

(1) Identify the individual for whom the exception is requested, the appointing authority to be used, and the position to which he or she will be appointed.

(2) Describe how the position is essential to accomplishing the agency's mission and how the individual is uniquely qualified for the position.

(3) Describe the length, breadth, and results of the agency's recruiting efforts for the position and any other factors demonstrating that the individual is the only qualified applicant available for the position.

(4) If the individual is being reemployed in the agency that paid the separation incentive, demonstrate why the recruiting need could not be foreseen at the time of separation.

(c) *Application of exceptions.* A waiver of repayment of a separation incentive approved by the Office of Personnel Management under this part applies only while the individual for whom it was approved continues to serve in the same or a successor position. The waiver terminates if the individual is assigned to a different position during the 5-year period in which repayment is required, unless OPM approves a new waiver.

[FR Doc. 94–27743 Filed 11–8–94; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 997

[Docket No. FV94–997–2FIR]

Clarifying and Updating Provisions Regulating the Quality of Domestically Produced Peanuts Handled by Persons Not Subject to the Peanut Marketing Agreement

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim rule that clarified that peanut handlers not signatory to Peanut Marketing Agreement No. 146 (Agreement) may store and shell certain Segregation 2 seed peanut lots with Segregation 1 seed peanut lots when such lots are produced under the auspices of a State agency which regulates or controls their production. The interim rule also updated information on the laboratories qualified to perform aflatoxin testing of shelled peanuts, and certain cleaned inshell peanuts. Allowing peanut handlers to commingle certain seed peanut lots reduces the space and costs needed to store seed peanuts. Updating laboratory information should assist handlers in moving peanuts to market. These changes are intended to bring the non-signatory handling requirements into conformity with those specified in the Agreement.

EFFECTIVE DATE: December 9, 1994.

FOR FURTHER INFORMATION CONTACT: Richard Lower, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington,

DC 20090–6456, telephone (202) 720–2020, facsimile (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued pursuant to requirements of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. This action is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 45 handlers of peanuts who have not signed the Agreement who are subject to the regulations contained herein. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000. It is estimated that most of the handlers are small entities. Most producers doing business with these handlers are also small entities. Small agricultural producers have been defined as those having annual receipts of less than $500,000.

In 1993, the reported U.S. production, mostly covered under the Agreement, was approximately 3.33 billion pounds of peanuts, a 22 percent decrease from 1992 and the lowest level since 1983. The preliminary 1993 peanut crop value is $991.65 million, 77 percent of the 1992 crop value.

After aflatoxin was found in peanuts in the mid-1960's, the domestic peanut industry has sought to minimize aflatoxin contamination in peanuts and peanut products. Under authority of the Act, Peanut Marketing Agreement No. 146 and the Peanut Administrative Committee (Committee) were established by the Secretary in 1965. The Agreement was signed by a majority of domestic peanut handlers.

Public Law 101–220, enacted December 12, 1989, amended section 608(b) of the Act to require that all peanuts handled by persons who have not entered into the Agreement (non-signers) be subject to quality and inspection requirements to the same extent and manner as are required under the Agreement. It is estimated that 5 percent of the domestic peanut crop is marketed by non-signatory handlers and the remainder of the crop is handled by signatory handlers.

Under the non-signer provisions, no peanuts may be sold or otherwise disposed of for human consumption if the peanuts fail to meet the quality requirements of the Agreement. Regulations to implement Public Law 101–220 were issued and made effective on December 4, 1990 (55 FR 49980) and amended several times thereafter, and are published in 7 CFR part 997. All such amendments were made to ensure that the non-signer handling requirements remain consistent with modifications to the handling requirements applied to signatory handlers under the Agreement. Violation of those regulations may result in a penalty in the form of an assessment by the Secretary equal to 140 percent of the support price for quota peanuts. The support price for quota peanuts is determined under section 108B of the Agricultural Act of 1949 (7 U.S.C. 1445c–3) for the crop year during which the violation occurs.

The intent of P.L. 101–220 and the objective of the Agreement are to insure that only wholesome peanuts of good quality enter edible market channels. Under the non-signer and Agreement regulatory provisions, farmers' stock peanuts with visible *Aspergillus flavus* mold (the principal source of aflatoxin) are required to be diverted to non-edible uses. Each lot of shelled peanuts and certain lots of inshell peanuts, destined for edible channels, must be officially sampled and chemically tested for aflatoxin by the Department or in other laboratories listed in the regulations. Inspection and chemical analysis programs are administered by the Department.

Under the non-signer provisions, the second sentence of paragraph (e) *Seed peanuts.* prohibits the commingling of Segregation 2 seed lots with Segregation 1 peanut lots intended for human consumption. The difference between Segregation 1 and Segregation 2 lots is that Segregation 1 lots may contain no more than 2 percent damaged kernels and no more than 1 percent concealed damaged kernels, while Segregation 2 lots may contain more than 2 percent damaged kernels and 1 percent concealed damaged kernels. Both Segregation 1 lots and Segregation 2 lots must be free of visible *Aspergillus flavus.*

This rule continues in effect the clarification of the handling provisions in paragraph (e) of *§ 997.20 Incoming regulation* allowing Segregation 2 seed peanut lots containing up to 3 percent total damaged kernels to be stored, shelled and commingled with Segregation 1 seed peanut lots if both lots were produced under the auspices of a State peanut agency which regulates or controls the production of the lots being commingled.

The Committee meets in February or March each year and recommends to the Secretary such rules and regulations as may be necessary to keep the Agreement consistent with current industry practice. The Committee met on March 16, 1994, and unanimously recommended clarification of seed peanut handling regulations under the Agreement. Members of the Committee noted the impracticality of having separate storage bins for each of the various types and varieties of seed peanuts with up to 3 percent damage. It was noted that, if Segregation 2 seed lots with up to 3 percent damage must be stored separate from Segregation 1 seed lots, "foundation," "registered," and "certified" seed lots would have to be segregated into separate categories. This could increase the number of separate bins and space needed to store seed peanut lots. The current regulations for both signers and non-signers do not specifically address commingling Segregation 1 seed lots with Segregation 2 seed lots.

The Committee concluded that it is impracticable to require such Segregation 2 seed peanuts be stored and shelled separate from Segregation 1 seed peanuts. The Department has completed rulemaking implementing such a clarification in handling requirements applied on signatory handlers.

Continuation of the amendment to paragraph (e) of § 997.20(e) for non-signer seed peanuts will continue the continuity between the non-signatory handling requirements and those specified in the Agreement, and facilitate the movement of peanuts to market.

This rule will not affect the outgoing quality regulation of the non-signer provisions. The quality and handling requirements, as specified in § 997.30 *Outgoing regulations* applicable to non-signatory 1993–94 crop peanuts, continue to be effective for 1994–95 crop peanuts.

The interim rule also updated addresses and facsimile numbers, where applicable, of approved aflatoxin testing

laboratories that perform chemical analyses required by the non-signatory handling regulations. This information is provided in paragraph (c)(5)(i) of § 997.30 *Outgoing regulations.* Non-signatory handlers may send peanut samples to any laboratory on the list, per instructions specified in paragraph (c) of the outgoing regulation. The interim rule also updated information in paragraph (c)(5)(ii) identifying the contact point of the USDA Science Division headquarter's office. This final rule continues the aforementioned changes.

The interim final rule was published in the **Federal Register** on August 30, 1994 (59 FR 44610). That interim final rule provided that interested persons could file comments through September 29, 1994. No comments were received.

Based on available information, the Administrator of the AMS has determined that the issuance of this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all available information, it is found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 997

Food grades and standards, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 997 is amended as follows:

PART 997—PROVISIONS REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS HANDLED BY PERSONS NOT SUBJECT TO THE PEANUT MARKETING AGREEMENT

Accordingly, the interim final rule amending 7 CFR part 997 which was published at 59 FR 44610, on August 30, 1994, is adopted as a final rule without change.

Dated: November 3, 1994.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–27768 Filed 11–8–94; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–AEA–13]

Modification of Class D Airspace Areas; North Philadelphia, PA and Willow Grove, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action modifies the Class D airspace areas at North Philadelphia, PA, and Willow Grove, PA, by amending these area's effective hours to coincide with the associated control tower hours of operation. This action also reduces the Class D airspace at Willow Grove, PA, due to the closure of the Warminster NAWC, PA, Air Traffic Control Tower. External dimensions of these Class D airspace areas are being reduced and minor changes to the internal boundary between the North Philadelphia, PA, and Willow Grove, PA, Class D airspace areas are being made. The intended effect of this action is to clarify when two way radio communication with these air traffic control towers is required.

DATES: *Effective date.* 0901 U.T.C. December 8, 1994.

Comment date. Comments must be received on or before December 1, 1994.

ADDRESSES: Send comments on the rule in triplicate to: Manager, Air Traffic Division, AEA–500, Airspace Docket Number 94–AEA–13, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430. An informal docket may also be examined during normal business hours at the address listed above. The official docket may also be examined in the Office of the Assistant Chief Counsel, AEA–7, at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Jordan, Airspace Specialist, System Management Branch, AEA–530, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–0857.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the "**DATES**" section. However, after the review of any comments and if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date of the rule or to amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) modifies the Class D airspace areas at North Philadelphia, PA, by amending the area's effective hours to coincide with the associated control tower hours of operation. Prior to Airspace Reclassification, an airport traffic area (ATA) and a control zone (CZ) existed at these airports. However, Airspace Reclassification, effective September 16, 1993, discontinued the use of the term "airport traffic area" and "control zone," replacing them with the designation "Class D airspace." The former CZ was continuous, while the former ATA was contingent upon the operation of the Air Traffic Control Tower. The consolidation of the ATA and CZ into a single Class D airspace designation makes it necessary to modify the effective hours of the Class D airspace to coincide with the control tower's hours of operation. Additionally, this action reduces the lateral limits of the Willow Grove, PA, Class D airspace area due to the closure of the NAWC Warminster, PA Air Traffic Control Tower, and redefines the internal boundary between Willow Grove, PA, and North Philadelphia, PA, Class D airspace areas. The intended effect of this action is to clarify when two way radio communication with these air traffic control towers is required.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations listed in this document will be published subsequently in the Order. Because this action merely makes minor changes to the Class D airspace boundaries, reduces the total coverage of Class D airspace, and modifies the effective hours to coincide with the

existing hours of operation of the associated control towers, this is a rule insignificant in nature and impact and in which the public is not particularly interested. Therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; Executive Order 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 5000—General

* * * * *

AEA PA D North Philadelphia, PA [Revised]

Northeast Philadelphia Airport, Philadelphia, PA
(lat. 40°04'55"N., long. 75°00'39"W.)
Willow Grove NAS, Willow Grove, PA
(lat. 40°12'00"N., long. 75°08'53"W.)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.2-mile radius of Northeast Philadelphia Airport extending clockwise from a 030° bearing to a 252° bearing from the airport and within a 5.3-mile radius of the Northeast Philadelphia Airport extending clockwise from a 252° bearing to a 030° bearing from the airport, excluding that portion within the Willow Grove, PA, 4.4-mile radius Class D airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AEA PA D Willow Grove, PA [Revised]

Willow Grove NAS, Willow Grove, PA
(lat. 40°12'00"N., long. 75°08'53"W.)
Willow Grove TACAN
(lat. 40°11'40"N., long. 75°08'47"W.)
Northeast Philadelphia Airport, Philadelphia, PA
(lat. 40°04'55"N., long. 75°00'39"W.)

That airspace extending upward from the surface to and including 2,900 feet MSL within a 4.4-mile radius of Willow Grove NAS extending clockwise from a 347° bearing to a 253° bearing from the airport and within a 4.8-mile radius of Willow Grove NAS extending clockwise from a 253° bearing to a 347° bearing from the airport and within 2.6 miles each side of the Willow Grove TACAN 136° radial extending from the TACAN to 6.1 miles southeast of the TACAN, excluding the southeast extension of the Class D airspace area that coincides with the 5.3-mile radius of the Class D airspace area at Northeast Philadelphia Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Jamaica, New York, on October 19, 1994.

James K. Buckles,

Acting Manager, Air Traffic Division.

[FR Doc. 94–27776 Filed 11–8–94; 8:45 am]

BILLING CODE 4910-13-M

LIBRARY OF CONGRESS

36 CFR Part 701

[Docket No. LOC 94–3]

Credit and Recognition Policy on the Use of the Library of Congress Name, Seal, or Logo

AGENCY: Library of Congress.

ACTION: Final regulation.

SUMMARY: The Library of Congress issues this final regulation to revise its policy on the use of its name, seal, or logo to assure that the Library of Congress is properly and appropriately identified and credited as a source of materials in publications that rely on Library resources, so that the public may know that the resources in its national library are being used productively and in fulfillment of its mission.

EFFECTIVE DATE: November 9, 1994.

FOR FURTHER INFORMATION CONTACT: Johnnie M. Barksdale, Regulations Officer, Office of the General Counsel, Library of Congress, Washington, DC 20540–1050. Telephone No. (202) 707–1593.

SUPPLEMENTARY INFORMATION: Under the authority of 2 U.S.C. 136, the Librarian of Congress is authorized to make rules and regulations for the government of the Library. 18 U.S.C. 1017 contains criminal provisions on the misuse of official U.S. Government seals. Part 701 is revised to clarify the boundaries of when and how much credit or recognition the Library of Congress should appropriately receive when its name, seal, or logo are used in conjunction with a commercial product. It outlines also the current circumstances under which the use of both the name and seals of the Library may be granted and the procedures for doing so. This part combines and revises the provisions set forth in §§ 701.35 and 701.36 of 36 CFR Chapter VII. Section 701.36 of 36 CFR Chapter VII, Use of the Seal of the Library of Congress and the Library of Congress Trust Fund Board, will be removed.

Comments

The Library of Congress received one comment on the proposed regulation; that comment submitted by Jay L. Hack, Esquire, of Serchuk & Zelermyer, Attorneys at Law, White Plains, New York. Mr. Hack objected to the language in § 701.35, paragraph (c)(1) in the proposed regulation, regarding the use of the Library's name only when it is in the interest of the Library. Mr. Hack believes that this language constitutes a violation of First Amendment rights. The Library agrees that the purpose and focus of this proposed regulation was obscured by the language used. Accordingly, § 701.35, paragraph (c)(1) has been revised to clarify the Library's policy on the use of its name.

List of Subjects in 36 CFR Part 701

Libraries, Seals and insignias.

Final Regulation

In consideration of the foregoing the Library of Congress amends 36 CFR Part 701 as follows:

PART 701—PROCEDURES AND SERVICES

1. The authority citation for part 701 is revised to read as follows:

Authority: 2 U.S.C. 136; 18 U.S.C. 1017.

2. Section 701.35 is revised to read as follows:

§ 701.35 Credit and Recognition Policy on the Use of the Library Name, Seal, or Logo.

(a) *Purpose.*

The purpose of this section is to assure that the Library of Congress is properly and appropriately identified and credited as a source of materials in publications that rely on Library resources, so that the public may know that the resources in its national library are being used productively in fulfillment of its mission.

(b) *Definitions.*

(1) *Publication* means any tangible expression of words or thoughts in any form or format, including print, sound recording, television, optical disc, software, online delivery, or other technology now known or hereinafter created. It includes the whole range of tangible products from simple signs, posters, pamphlets, and brochures to books, television productions, and movies.

(2) *Internal Library publication* means a publication over which any unit of the Library has complete or substantial control or responsibility.

(3) *Collaborative publications* means those in which any unit of the Library is providing more than routine assistance. The assistance may be pursuant to a formal agreement or may simply be an extensive courtesy.

(4) *Commercial publications* means those known or likely to involve subsequent mass distribution, whether by a for-profit or not-for-profit organization or individual.

(5) *Noncommercial user* means an individual whose publication includes a significant number of Library references, but the intended purpose of which is personal, scholarly, or noncommercial.

(6) *Official Library logo* means any official seal of the Library.

(c) *Credit and recognition policy.*

(1) The name "Library of Congress," or any abbreviation thereof, is used officially to represent the Library of Congress and its programs, projects, functions, activities, or elements thereof. In addition, the Library recognizes that its name may be used informationally by others in publications. Except as provided for in this part, however, the use of the Library's name, explicitly or implicitly to endorse materials in any publication, is prohibited.

(2) The Library of Congress seal symbolizes the Library's authority and standing as an official agency of the U.S. Government. As such, it shall be displayed only on official documents or publications of the Library. The seal of the Library of Congress Trust Fund Board shall be affixed to documents of that body as prescribed by the Librarian of Congress. Procedures governing the use of any other Library of Congress logo are set out in paragraphs (c)(3) through (c)(10) of this section.

(3) Questions regarding the appropriateness of the recognition or credit shall be referred to the Public Affairs Office.

(4) *Internal Publications.* Each internal Library publication shall include a copy of an official Library logo in a position, format, and location suitable to the particular media involved. The logo may be alone or in addition to an approved unit or activity logo, but shall be no less prominent than any other logo used, except in the cases of the Copyright Office, the Congressional Research Service, and the Center for the Book. Other exceptions to this policy may be made only if a written request is approved by the Management Team member under whose jurisdiction the publication falls.

(5) *Collaborative/Commercial Publications*

(i) Individuals with whom the Library is engaged in a collaborative publication, and individuals requesting assistance for commercial publications, shall be instructed regarding Library policy on credit, recognition, and endorsement by the Library employee with whom they are dealing.

(ii) Ordinarily, the Library logo accompanied by a concise acknowledgement should appear in an appropriate and suitable location on all collaborative and all commercial publications. The Library requires that a credit line accompany reproductions of images from its collections.

(iii) The size, location, and other attributes of the logo and credit line should be positioned in such a way that they do not imply Library endorsement of the publication unless such endorsement is expressly intended by the Library, as would be the case in copublication or coproduction activities. Use of the Library name or logo in any context suggesting an explicit or implicit endorsement may be approved in only those instances where the Library has sufficient expertise to pass judgment on the subject matter, where that expertise has been engaged or applied, and where the terms of the collaborative undertaking are such that the Library has sufficient control over the publication to make changes necessary to reflect Library expertise.

(iv) Library officers working on commercial publication projects shall notify all collaborators of Library policy in writing if the collaboration is arranged through an exchange of correspondence. A statement of Library policy shall be incorporated into the agreement if the terms of the collaboration are embodied in any written instrument, such as a contract or letter of understanding.

(6) *Noncommercial Users.* Staff members assisting individuals who are noncommercial users of Library resources shall encourage them to extend the customary professional courtesy of acknowledging their sources in publications, including films, television, and radio, and to use approved credit lines.

(7) Each product acquired for resale by the Library that involves new labeling or packaging shall bear a Library logo and shall contain information describing the relevance of the item to the Library or its collections. Items not involving new packaging shall be accompanied by a printed description of the Library and its mission, with Library logo, as well as the rationale for operating a gift shop program in a statement such as, "Proceeds from gift shop sales are used to support the Library collections and to further the Library's educational mission."

(8) Each item authorized by the Library pursuant to a licensing agreement (directly or through a third party) shall bear a Library logo and shall contain information describing the relevance of the item to the Library or its collections.

(9) Office Systems Services shall make available copies of the Library seal or logo in a variety of sizes and formats, including digital versions.

(10) Each service unit head shall be responsible for devising the most appropriate way to carry out and enforce this policy.

(d) *Violations.*

(1) All violations or suspected violations of this section or of 18 U.S.C. 1017 shall be reported to the Office of the General Counsel as soon as they become known.

(2) Whenever the General Counsel has determined that any person or organization is engaged in or about to engage in an act or practice that constitutes or will constitute conduct prohibited by this part or a violation of any requirements of this section, the General Counsel shall take whatever action necessary, including seeking the assistance of the U.S. Department of Justice, to obtain injunctive relief or damages.

Dated: November 2, 1994.

James H. Billington,

The Librarian of Congress.

[FR Doc. 94–27652 Filed 11–8–94; 8:45 am]

BILLING CODE 1410–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AD–FRL–5103–8]

Clean Air Act Final Interim Approval of Operating Permits Programs in Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: EPA is promulgating interim approval of the operating permits program submitted by the State of Washington for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources and to certain other sources. The Washington program includes submittals by the Washington Department of Ecology (Ecology), the Washington Energy Facility Site Evaluation Council (EFSEC), and seven local air authorities: the Benton-Franklin Counties Clean Air Authority (BFCCAA), the Northwest Air Pollution Authority (NWAPA), the Olympic Air Pollution Control Authority (OAPCA), the Puget Sound Air Pollution Control Agency (PSAPCA), the Spokane County Air Pollution Control Authority (SCAPCA), the Southwest Air Pollution Control Authority (SWAPCA), and the Yakima County Clean Air Authority (YCCAA).

EFFECTIVE DATE: December 9, 1994.

ADDRESSES: Copies of Washington's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Elizabeth Waddell, U.S. Environmental Protection Agency, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101, (206) 553–4303

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Introduction

Title V of the Clean Air Act Amendments of 1990 (sections 501–507 of the Clean Air Act ("the Act")) and implementing regulations at 40 Code of Federal Regulations (CFR) part 70, require that States develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. EPA's program review occurs pursuant to Section 502 of the Act and the Part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of Part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by two years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

On August 18, 1994, EPA proposed interim approval of the operating permits program for Ecology, EFSEC, NWAPA, OAPCA, PSAPCA, SCAPCA, and SWAPCA. The same **Federal Register** notice proposed disapproval of the programs for BFCCAA and YCCAA and, in the alternative, interim approval of these programs if certain regulatory changes were made before EPA took final action on the proposal. See 59 FR 42552 (Aug. 18, 1994). EPA received eleven public comments on the proposal. In this notice EPA is taking final action on its proposal to promulgate interim approval of the operating permits program for Ecology, EFSEC, and all seven local air authorities in Washington (collectively, "the local air authorities").

II. Final Action and Implications

A. Analysis of State Submission and Response to Public Comments

Both BFCCAA and YCCAA made the regulatory changes necessary to receive interim approval. The board of directors of BFCCAA repealed BFCCAA Reg. 1, §§ 4.01, 4.02, 4.04, 4.05, 4.06, and 4.07 on August 18, 1994. The revised regulations were submitted to the Washington State register and became effective on September 23, 1994. On September 14, 1994, the board of directors of YCCAA repealed YCCAA Reg. 1, §§ 6.02, 6.04, 6.05, 6.07, and 6.08; revised YCCAA Reg. 1, § 12.01 to provide that the identified provisions of the Washington State Administrative Code are incorporated by reference unless the YCCAA regulation is more stringent; Revised YCCAA Reg. 1, § 12.02 so that the identified provisions of Federal law are incorporated by reference. The revised regulations were submitted to the Washington State register and became effective on October 22, 1994. The revised regulations for BFCCAA and YCCAA were submitted by the State of Washington on September 29, 1994 as an amendment to the Washington Title V program.

EPA received eleven public comments on the proposed interim approval of the Washington program, including comments from the Washington Department of Ecology and the Puyallup Tribe of Indians. No commenters objected to approval of the Washington permit program, although one commenter requested that the program not be approved before November 15, 1994 because of the substantial time needed to complete permit applications.

1. Insignificant Emissions Units

Most of the commenters stated that the insignificant emissions units provisions of the State operating permit regulation (WAC 173–401–200(16) and 173–401–530) should be granted full approval rather than interim approval. These commenters disagreed with EPA's interpretation that no unit for which there is an applicable requirement could be defined as "insignificant." They further stated that such an interpretation would prevent Washington and most other States from granting any relief for insignificant emission units, which they argue is inconsistent with the intent of Part 70. The result would be that all emissions, regardless of size and environmental impact, would be subject to all Part 70 requirements, including periodic monitoring, reporting, recordkeeping and compliance certification. Permit applications would have to describe emissions from all units and responsible officials would be required to conduct extensive due diligence efforts in order to certify the compliance of emission units that emit very small quantities of pollutants. Commenters emphasized that this was an unreasonable regulatory burden that would result in excessive paperwork and would likely decrease the ability of permitting agencies to effectively enforce Title V permits because inspectors would have to read through numerous pages of specifications and requirements to determine which emission units actually have permit conditions.

EPA maintains, however, that Title V and the Part 70 rules preclude the exemption of emission units as "insignificant" when such units are subject to an applicable requirement. Section 504(a) of the Act requires that "each permit issued under this title shall include enforceable emission limitations and standards, a schedule of compliance, a requirement that the

permittee submit to the permitting authority, no less often than every 6 months, the results of any required monitoring, and such other conditions as are necessary to assure compliance with *applicable requirements of the Act, including the requirements of the applicable implementation plan.*" (emphasis added). Section 70.6(a)(1) provides that each permit shall include "emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance." Furthermore, § 70.6(c)(1) requires that each permit shall contain "compliance, certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit." The fact that an emission unit may emit only small quantities of pollutants does not provide a basis to exempt it from the fundamental statutory requirement that the permit specifically include, and ensure compliance with, all applicable requirements.

EPA understands the implementation concerns expressed by the commenters but disagrees that the Part 70 permit requirements need be unduly burdensome for these smaller emission units with only generally applicable requirements. For example, the requirement to "describe" emissions of regulated pollutants in a permit application is not a requirement to quantify those emissions. These smaller units can be aggregated and described in very general terms (e.g. all valves and flanges not otherwise specified). Furthermore, the requirement to include in a permit compliance certification, test, monitoring, reporting, and recordkeeping *sufficient to assure compliance* with the terms and conditions of the permit does not impose the same level of rigor with respect to small emission units that do not require extensive testing or monitoring in order to determine compliance with the applicable requirements.

Several commenters also stated it was unreasonable and inappropriate to require Washington to change its provisions for insignificant emission units at this time because this issue is part of ongoing litigation over the part 70 rules and may be revised. EPA acknowledges that it may be both burdensome and confusing if the Part 70 rules on insignificant emission units are changed and Ecology is required to revise its rules twice, once to meet EPA's current objection and later if part 70 is revised. EPA has no legal mechanism, however, to either grant a longer interim approval period or to grant full approval under the current part 70 rules based on a possibility that the part 70 regulations may change as a result of notice and comment rulemaking sometime in the future.

2. Definition of Title I Modification

In its August 18, 1994 **Federal Register** notice proposing interim approval for the Washington program, EPA advised the State that it would be required to revise its definition of the term "title I modification" to obtain full EPA approval:

> Revise WAC 173–401–200(33), the definition of "Title I modification," to include any modification permitted through a minor source preconstruction permit. The EPA believes the phrase "modification under an[y] provision of title I of the Act" in 40 CFR 70.7(e)(2)(i)(A)(5) is best interpreted to mean literally any change at a source that would trigger permitting authority review under regulations approved or promulgated under Title I of the Act. This would include State preconstruction review programs approved by EPA as part of the State Implementation Plan under section 110(a)(2)(C) of the Clean Air Act and regulations addressing source changes that trigger the application of NESHAP established pursuant to section 112 of the Act prior to the 1990 amendments. The EPA intends to revise its criteria for interim approval in 40 CFR 70.4(d) prior to taking final action on this proposal to grant Washington interim approval so that interim approval may be granted to State programs like Washington's that currently allow a more narrow definition of Title I modification. (59 FR 42557).

On August 29, 1994, EPA proposed revisions to the interim approval criteria in 40 CFR 70.4(d) to, among other things, allow State programs with a more narrow definition of "title I modification" to receive interim approval (59 FR 44572). The Agency also solicited public comment on the proper interpretation of "title I modifications" (59 FR 44573). The Agency stated that if, after considering the public comments, it continues to believe that the phrase "title I modifications" should be interpreted as including minor NSR changes, it would revise the interim approval criteria as needed to grant states that adopted a narrower definition interim approval.

In response to EPA's proposed interim approval of the Washington program, several commenters questioned whether the State's adoption of a narrower "title I modification" definition justified anything other than full approval. These commenters asserted that Washington's current definition is the correct one under the existing regulations and the Clean Air Act and that a broader interpretation including minor NSR would be wholly unworkable.

One commenter, the National Environmental Development Association/Clean Air Regulatory Project (NEDA/CARP), further contended that EPA was using the August 29, 1994 proposed rule to effectively require revision of a State operating permits program that was otherwise consistent with current Part 70 and that such an approach was unauthorized, not supported by the Clean Air Act or Part 70, and poor public policy. NEDA/CARP also suggested that EPA's August 18, 1994 proposal to require Washington to adopt a broader interpretation of "title I modification" to obtain full approval indicated that the Agency does not intend to consider public comment on the August 29, 1994 proposal that solicits comments on the proper interpretation of "title I modifications."

As noted in the August 18, 1994 **Federal Register** notice, proposing interim approval of Washington's operating permit program, EPA intended to finalize its revisions to the interim approval criteria under 40 CFR 70.4(d) before taking final action on part 70 programs submitted by the States. However, that is no longer possible. Publication of the proposed revisions was delayed until August 29, 1994, and EPA received several requests to extend the public comment period.[1] Given the importance of the issues in that rulemaking to States, sources and the public, but mindful of the need to take action quickly, EPA agreed to extend the comment period until October 28, 1994 (see 59 FR 52122 (October 14, 1994)). Consequently, final action to revise the interim approval criteria will not occur before the deadline for EPA action on State programs, such as Washington's, that were submitted on or before November 15, 1993.[2]

EPA believes it would be inappropriate to delay action on Washington's program, perhaps for several months, until final action is taken on the interim approval revisions. EPA also believes it would be inappropriate to grant interim approval to Washington on this issue before final action is taken to revise the current interim approval criteria of 40 CFR

[1] EPA originally established a 30-day public comment period for the August 29, 1994 proposal. In response to several requests for extension, however, EPA agreed to allow an additional thirty days for public comments. See 59 FR 52122 (October 14, 1994).

[2] Section 502(d) requires, in relevant part, that "[n]ot later than 1 year after receiving a program, and after notice and opportunity for public comment, the Administrator shall approve or disapprove such program, in whole or in part."

70.4(b) to provide a legal basis for such an interim approval. Until the revision to the interim approval criteria is promulgated, EPA's choices are to either fully approve or disapprove the narrower "title I modification" definition in States such as Washington. For the reasons set forth below, EPA believes that disapproving such programs at this time solely because of this issue would be inappropriate.

First, EPA has not yet conclusively determined that a narrower definition of "title I modifications" is incorrect and thus a basis for disapproval (or even interim approval). The Agency has received numerous comments on this issue as a result of the August 29, 1994 **Federal Register** notice, and EPA cannot and will not make a final decision on this issue until it has evaluated all of the comments. Second, EPA believes that the Washington program should not be disapproved because EPA itself has not yet been able to resolve this issue through rulemaking. Moreover, disapproving programs from States such as Washington that submitted their programs to EPA on or before the November 15, 1993 statutory deadline could lead to the perverse result that these States would receive disapprovals, while States which were late in submitting programs could take advantage of revised interim approval criteria if and when these criteria become final. In effect, States would be severely penalized for having made timely program submissions to EPA. Finally, disapproval of a State program for a potential problem that primarily affects permit revision procedures would delay the issuance of Part 70 permits, hampering State/Federal efforts to improve environmental protection through the operating permits system.

For the reasons mentioned above, EPA is approving the Washington program's use of a narrower definition of "title I modifications" at this time.[3] However, should EPA in the interim approval criteria rulemaking make a final determination that such a narrow definition of "title I modification" is incorrect and that a revision of the interim approval criteria is warranted, the Agency will propose further action on Washington's program so that the State's definition of "title I modifications" could become grounds for interim approval.[4] A State program like Washington's that receives full approval of its narrower "title I modification" definition pending completion of EPA's rulemaking must ultimately be placed on an equal footing with States that receive interim approval in later months under any revised interim approval criteria because of the same issue. Converting the full approval on this issue to an interim approval after EPA completes its rulemaking will avoid this inequity. EPA anticipates that an action to convert the full approval on the "title I modification" issue to an interim approval would be effected through an additional rulemaking, so as to ensure that there is adequate notice of the change in approval status.

3. Section 112(g) Modifications

One commenter stated that EPA has proceeded in a confusing and unauthorized fashion by proposing a construction ban on section 112(g) modifications and that EPA should not delegate section 112(g) authority until it completes its own rulemaking.

EPA did not propose a construction ban but simply noted the provision of section 112(g)(2) of the Act which prohibits the modification, construction, or reconstruction of a source after the date of approval of a Title V program unless maximum achievable control technology (MACT), determined on a case-by-case basis if necessary, is met. Although section 112(g)(1) requires the Administrator to publish guidance with respect to the implementation of section 112(g), the plain meaning of section 112(g)(2) is that it takes effect on the effective date of the Title V program in any State.

EPA has acknowledged that States may encounter difficulties implementing section 112(g) prior to the promulgation of final EPA regulations (see June 28, 1994 guidance memorandum entitled "Guidance for Implementation of Section 112(g)" signed by John Seitz). EPA has issued guidance, in the form of a proposed rule implementing 112(g), which may be used to determine whether a physical or operational change at a source is not a modification either because it is below *de minimis* levels or because it has been offset by a decrease of more hazardous emissions (see 59 FR 15004 (April 1, 1994)). EPA believes the proposed rule provides sufficient guidance to permitting authorities and sources until such time as EPA's section 112(g) rulemaking is finalized.

Although EPA does not have a program designed specifically to implement section 112(g), Washington does have a preconstruction review program that could serve as a procedural vehicle for rendering federally enforceable a case-by-case MACT or offset determination. Although the scope of Washington's program may not cover every situation where a section 112(g) modification, construction, or reconstruction may occur, it would cover most circumstances. In order to provide a federally-recognized mechanism to implement section 112(g) on an interim basis until final EPA regulations are promulgated, EPA intends to propose approval of Washington's preconstruction review program in a separate **Federal Register** notice. Final approval of Washington's preconstruction review program, and not this final approval of its Title V operating permit program, would represent EPA's delegation of section 112(g) authority to the State.

4. Limitations on Potential To Emit

One commenter objected to EPA's requirement that OAPCA revise its definition of "potential to emit" to include only those limitations on a source's capacity to emit that are federally enforceable, arguing that it requires local authorities to ignore their own and other State-enforceable limitations.

The cited definition appears in OAPCA Reg. 1, Art. 6, which addresses the operating permit program. As such, the definition of potential to emit must be consistent with the Part 70 rules which require, for the purposes of the Title V operating permit program, that all limits on potential to emit be federally enforceable. EPA does not place any restrictions on a local authority's use of non-Federally enforceable emission limits on non-Title V sources or on establishing additional, non-federally enforceable emission limits on Title V sources. However, in order for such limitations to be recognized for purposes of the Federal Clean Air Act, they must be enforceable by EPA and by citizens under the Act.

5. Scope of the Program—Tribal Lands

EPA proposed to exclude from the Washington Title V program, Title V sources located on any trust or restricted lands within the Puyallup 1873 Survey Area or any other lands within the exterior reservation boundaries of a Federally-recognized Indian Tribe because Ecology did not establish that it had jurisdiction over sources on these lands. EPA proposed to apply the

[3] For similar reasons, the EPA will not construe 40 CFR 70.7(e)(2)(i)(A)(3) to prohibit Washington from allowing minor NSR changes to be processed as minor permit modifications. See 59 FR 44573–44574.

[4] State programs with a narrower "title I modifications" definition that are acted upon by EPA after an Agency decision that such a narrower definition is inappropriate would be considered deficient, but would be eligible for interim approval under revised 40 CFR 70.4(b).

Ecology and PSAPCA Title V program to non-trust lands within the 1873 Survey Area of the Puyallup Reservation because Ecology and PSAPCA submitted legal analysis demonstrating their authority to administer environmental laws on these lands. See 59 FR at 42554.

Ecology and PSAPCA presented legal analysis based on the Washington Indian (Puyallup) Land Claims Settlement, which expressly allocates jurisdiction according to a settlement agreement between the Tribe, Federal, State and local governments and certain private property owners. 25 U.S.C. 1773–1773j. The settlement agreement, in turn, gives Federal, State and local governments exclusive jurisdiction for the administration of environmental laws on all non-trust lands within the 1873 Survey Area and gives the Federal government and the Tribe exclusive jurisdiction for the administration of environmental laws on all trust and restricted lands within the Area.

The Puyallup Tribe of Indians commented that EPA correctly applied the settlement agreement in its proposed determination not to approve the application of Washington's Title V program to trust and restricted lands within the 1873 Survey Area. The Tribe also commented that Washington's request for authority over non-trust lands within the Survey Area was consistent with the settlement agreement.

In today's action, EPA finalizes its proposed determination that the Washington Title V program apply to Title V sources located on non-trust lands within the Survey Area.

During the public comment period, Ecology commented "that [it] has requisite authority to enforce and run the Air Operating Permits Program on tribal lands." Ecology's comments do not appear to challenge EPA's proposed allocation of jurisdiction over the Puyallup Reservation. Rather, Ecology appears to contend that EPA has erred in proposing to exclude application of the State's Title V program to Title V sources within the exterior reservation boundaries of all other Federally-recognized Tribes located within the State.

In support of this contention, Ecology generally asserts that Ecology has "necessary jurisdiction to regulate Title V sources throughout the state." Ecology also appears to be alleging that, at a minimum, it has authority over non-Indian owned Title V sources on non-Indian owned fee lands within reservations. Ecology states that the law presumes it has authority over such sources and that the legal opinion accompanying its Title V program submittal should be interpreted to apply consistently at least to all fee lands within the exterior boundaries of the State. Ecology comments that "[c]ourts have only found for tribal jurisdiction when the weight of tribal interests is great enough" and that "[s]everal potential major sources owned by non-[I]ndians with no tribal relationships can be found in the State on fee lands within reservations."

To obtain Title V program approval a State must demonstrate that it has adequate authority to issue permits and assure compliance by all sources required to have permits under Title V with each applicable requirement under the Act. See Section 502(b)(5) of the Act; 40 CFR 70.4(b)(3)(i). The authority must include:

> A legal opinion from the Attorney General from the State or the attorney for those State, local, or interstate air pollution control agencies that have independent counsel, stating that the laws of the State, locality, or interstate compact provide adequate authority to carry out all aspects of the program. This statement shall include citations to the specific stat[ut]es, administrative regulations, and, where appropriate, judicial decisions that demonstrate adequate authority. 40 CFR 70.4(b)(3).

Thus, the Act requires States to support their Title V program submittals with a specific showing of adequate legal authority over all regulated sources, including sources located on lands within Indian reservations.

EPA concludes that Ecology has not adequately demonstrated authority to regulate Title V sources owned by Tribal members or located on their territory or trust lands. Ecology's inability to reach into Indian country and apply environmental regulation to Tribal members, their territory or trust lands is not a new issue. Ecology previously asserted regulatory jurisdiction over Tribal lands in a submittal to EPA under the Resource Conservation and Recovery Act program. EPA declined to apply the program to waste-related activities on Tribal lands and its decision was upheld on judicial review. *See Washington Department of Ecology* v. *EPA*, 752 F.2d 1465 (9th Cir. 1985).

The court's conclusion was informed by "well-settled principles of Indian law" including the principle that "States are generally precluded from exercising jurisdiction over Indians in Indian country unless Congress has clearly expressed an intention to permit it." *Washington Department of Ecology*, 752 F.2d at 1469–1479 (citations omitted); *see also United States* v. *Mazurie*, 419 U.S. 544, 556 (1975) (the inherent sovereign authority of Indian Tribes extends "over both their members and their territory"); *Montana* v. *United States*, 450 U.S. 544, 556–557 (1981) (Tribes generally have extensive authority to regulate activities on lands that are held by the United States in trust for the Tribe).

Washington has also asserted jurisdiction over underground injection activities on Indian lands under the Safe Drinking Water Act, claiming its laws are applicable throughout the borders of the State. EPA concluded that Washington could not regulate these activities on Indian lands because it had failed to demonstrate that its authority to regulate was not preempted by Federal law, and that the State regulation would not infringe on Tribal self-government. 53 FR 43080–43081–43082 (Oct. 25, 1988); see *White Mountain Apache Tribe* v. *Bracker*, 448 U.S. 136 (1980); *California* v. *Cabazon Band of Mission Indians*, 408 U.S. 202 (1987).

Ecology contends that EPA should nevertheless presume that Ecology at least has authority over non-Indian owned Title V sources on fee lands within the exterior boundaries of Federally-recognized Indian reservations. EPA concludes that Ecology has also failed to adequately demonstrate authority over Title V sources located on fee lands within reservations.

EPA's regulations require specific evidence of legal authority. Adequate authority is especially necessary in these circumstances where, as set out below, Supreme Court case law recognizes inherent sovereign Tribal authority to regulate activities on fee lands where the conduct may have a serious and substantial impact on Tribal health or welfare, air pollution activities generally pose serious health risks, EPA has proposed to interpret the Tribal authority provisions of the Act as granting Tribes authority over air pollution activities on fee lands within reservations, and Federal Indian law and policies direct EPA to treat Tribes as sovereigns and to consider Tribal interests in taking Federal actions that affect Tribes.

The Supreme Court has indicated that a Tribe "may * * * retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the * * * health or welfare of the tribe." *Montana*, 450 U.S. at 566. A Tribe's inherent authority must be determined on a case-by-case basis, considering whether the conduct being regulated has a direct effect on the

health or welfare of the Tribe substantial enough to support the Tribe's jurisdiction over non-Indians. See *Brendale v. Confederated Tribes and Bands of the Yakima Indian Nation*, 492 U.S. 408 (1989).

The case law addressing a Tribe's authority over non-members on non-Indian owned fee lands within the exterior boundaries of a reservation must be viewed in light of the concerns presented by air pollution activities and, importantly, the 1990 Amendments to the Act. In 1990, Congress broadly addressed Tribal authority under the Act, adding sections 110(o) and 301(d) to the Act.[5] Section 301(d)(2) of the Act authorizes EPA to issue regulations specifying those provisions of the Act for which it is appropriate "to treat Indian Tribes as States." Further, it addresses the potential jurisdictional scope of Tribal programs under the Act, authorizing EPA to treat Tribes in the same manner as States for "the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction." Section 301(d)(2)(B) of the Act. In addition, section 110(o) provides that Tribal implementation plans under the Act "shall become applicable to all areas * * * located within the exterior boundaries of the reservation, notwithstanding the issuance of any patent and including rights-of-way running through the reservation."

EPA has proposed to interpret these and other provisions of the Act as granting Tribes—approved by EPA to administer Clean Air Act programs in the same manner as States—authority over all air resources within the exterior boundaries of a reservation for such programs. EPA has explained that "[t]his grant of authority by Congress would enable such Tribes to address conduct on all lands, including non-Indian owned fee lands, within the exterior boundaries of a reservation." 59 FR 43956, 43958–43960 (Aug. 25, 1994) (legal rationale).

Further, EPA observed that even without this proposed grant of authority, Indian Tribes would very likely have inherent authority over all activities within reservation boundaries, including non-Indian owned activities on fee lands, that are subject to regulation under the Act. The high mobility of air pollutants, resulting area-wide effects and the seriousness of such impacts would all tend to support such inherent Tribal authority. *See* 59 FR 43958, n. 5; *see also* 56 FR 64876 at 64877–64879 (Dec. 12, 1991). In fact, Congress relied on the serious harm posed by air pollution in adopting the Act. Congress found that "the growth in the amount and complexity of air pollution * * * has resulted in mounting dangers to the public health and welfare, including injury to agricultural crops and livestock, damage to and deterioration of property and hazards to air and ground transportation." Section 101(a)(2) of the Act; *see also, e.g.*, H.R. Rep. No. 490, 101st Cong. 2d Sess. (1990); S.Rep. No. 228, 101st Cong., 1st Sess. (1989).

Ecology advances various reasons why it makes "practical sense" for EPA to allow Ecology to regulate all Title V sources throughout the State, including those within reservation boundaries. For example, Ecology contends that:

(1) Ecology is more protective of air quality than minimum Federal standards require and therefore regulation by EPA or the Tribe in lieu of the State would represent backsliding to minimum Federal standards and may give reservation residents inequitable protection;

(2) The nature of air pollution transport and impacts renders it undesirable to have different regulatory bodies within the State and within reservations;

(3) Non-Indian populations will be impacted because of the proximity of trust and fee lands as well as the proximity of reservation lands and non-reservation populations; and

(4) The State is well-situated to regulate all Title V sources, having extensive experience with air quality protection and a comprehensive, effective program.

These arguments do not provide adequate evidence to conclude that Washington's program should apply to Title V sources within the exterior reservation boundaries of Federally-recognized Indian Tribes or, in particular, non-Indian activities on fee lands. As indicated previously, the legal test for determining whether a Tribe has inherent sovereign authority over non-Indian activities centers on the conduct at issue. That the State may effectively regulate the conduct in lieu of a Tribe does not defeat Tribal sovereign interests. Otherwise, inherent Tribal sovereignty would be determined not by the Tribal interests at stake but by a State's willingness to infringe upon Tribal domain.

Nor does the fact that Ecology has adopted requirements more stringent than the federal minimum support Ecology's claim of authority. Ecology's policy choices about the nature and desirability of State-wide air quality management cannot displace any inherent authority Tribes may have or any authority that Congress may have granted to Tribes under the Clean Air Act. Tribes may very well have inherent sovereign authority over air pollution activities on fee lands and may exercise that authority to regulate more stringently than Federal law requires. In addition, the adoption of sections 301(d) and 110(o) of the Act evince Congressional intent to allow Tribes to implement Clean Air Act programs in the same manner as States. Congress gave EPA the responsibility of identifying the programs under the Act for which such treatment is appropriate. EPA's proposed Clean Air Act Tribal authority rule provides that Tribes, like States, will retain authority under the Act to impose requirements that are more stringent than Federal standards. 59 FR 43967.

At the same time, Congress and EPA recognize that it may take time for Tribes to develop the air quality management expertise that States have amassed for 20 years. Nevertheless, Tribes must demonstrate adequate capability before EPA will authorize them to implement a Clean Air Act program. In reviewing tribal programs, EPA was directed by Congress to assure that the Tribe is "capable * * * of carrying out the functions to be exercised in a manner consistent with the terms and purposes of [the Act] and all applicable regulations." Section 301(d)(2)(C) of the Act. Further, EPA will fill gaps in air quality protection in the interim period before tribal Clean Air Act programs are approved, as necessary to ensure that reservation air quality is adequately protected. 59 FR at 43960–43961.

Ecology also relies on the legal opinion submitted with its Title V program stating that it applies consistently at least to all fee lands within the State. The opinion relied on by Ecology, however, does not specifically address or analyze the legal basis for application of the Title V program to sources on fee lands within the exterior reservation boundaries of Federally-recognized Tribes. Ecology submitted a specific, sound legal analysis to support its authority over the non-trust lands within the Puyallup 1873 Survey Area. Ecology now requests, without specific legal analysis, that EPA give Ecology authority over all Title V sources on all other Federally-recognized Indian reservations.

EPA is guided by Federal and Agency Tribal policy in making decisions

[5] In the 1977 Amendments to the Act, Congress gave Tribes authority to redesignate "[l]ands within the exterior boundaries of reservations" for purposes of the Prevention of Significant Deterioration of Air Quality program. Section 164(c) of the Act.

affecting Tribes. *Washington Department of Ecology*, 752 F.2d at 1471 & n. 5. As outlined below, these policies direct EPA to treat Tribes as sovereign governments not as subdivisions of States.

On January 24, 1983, the President issued a Federal Indian Policy stressing two related themes: (1) That the Federal government will pursue the principle of Indian "self-government" and (2) that it will work directly with Tribal governments on a "government-to-government" basis. An April 29, 1994 Presidential Memorandum reiterated that the rights of sovereign Tribal governments must be fully respected. 59 FR 22951 (May 4, 1994). EPA's Tribal policies commit to certain principles, including the following:

> EPA recognizes Tribal Governments as sovereign entities with primary authority and responsibility for the reservation populace. Accordingly, EPA will work directly with Tribal Governments as the independent authority for reservation affairs, and not as the political subdivisions of States or other governmental units.
>
> * * * * *
>
> In keeping with the principal of Indian self-government, the Agency will view Tribal Governments as the appropriate non-Federal parties for making decisions and carrying out program responsibilities affecting Indian reservations, their environments, and the health and welfare of the reservation populace. Just as EPA's deliberations and activities have traditionally involved interests and/or participation of State Governments, EPA will look directly to Tribal Governments to play this lead role for matters affecting reservation environments.

November 8, 1984 "EPA Policy for the Administration of Environmental Programs on Indian Reservations"; Policy Reaffirmed by Administrator Carol M. Browner in a Memorandum issued on March 14, 1994.

The United States also has a unique fiduciary relationship with Tribes, and EPA must consider Tribal interests in its actions. *Nance* v. *EPA*, 645 F.2d 701, 710 (9th Cir. 1981), *cert. denied, Crow Tribe of Indians* v. *EPA*, 454 U.S. 1081 (1981). Taken together, Federal law and policy counsel that it would be inappropriate for EPA to approve a State program covering activities within reservation boundaries without an adequately demonstrated legal basis.

For the foregoing reasons, EPA concludes that, except for the non-trust lands identified within the 1873 Survey Area of the Puyallup reservation, Ecology has not adequately demonstrated that it has authority over Title V sources located on lands within the exterior reservation boundaries of Federally-recognized Tribes. In sum, Ecology relies on a general legal opinion and associated assertion that its authority should apply throughout the State, an undocumented claim that several potential major sources owned by non-Indians with no "tribal relationships" can be found in the State on fee lands within reservations, and several practical reasons why EPA should allow Washington's Title V program to regulate Title V sources within reservations and at least on fee lands within reservations. Title V plainly requires a specific demonstration of authority over regulated sources. Based on the Clean Air Act and Federal Indian law and policies, EPA concludes that Ecology has not adequately supported the application of its Title V program to reservations generally or to fee lands within reservation boundaries.

6. Criminal Authorities

Ecology has also commented that the State currently has sufficient legal authority to recover criminal fines for false material statements and tampering with monitoring devices, as required by 40 CFR 70.11(a)(3)(iii). EPA disagrees. Ecology has submitted no additional authority to support this assertion. Instead, Ecology relies on the June 7, 1994, opinion of the Washington Attorney General, which EPA reviewed and considered before proposing interim approval of the Washington operating permits program in part because Washington law did not contain these necessary criminal authorities. As previously stated, EPA does not believe that the authorities discussed in the Attorney General's opinion are as broad as the authorities required by 40 CFR 70.11(a)(3)(iii) [see 59 FR 42552 (August 18, 1994)]. Therefore, EPA maintains its position that in order to receive full approval, Ecology must revise RCW 70.94.430 to incorporate the criminal authorities required by 40 CFR 70.11(a)(3)(iii).

B. Options for Approval/Disapproval

EPA is promulgating interim approval of the operating permits programs submitted by Ecology, EFSEC and the local air authorities on November 1, 1993.[6] In order to receive full approval, the Washington permitting authorities must make the following changes:[7]

Ecology

(1) Revise RCW 70.94.430(1) to provide for maximum criminal penalties of not less than $10,000 per day per violation, as required by 40 CFR 70.11(a)(3)(ii).

(2) Revise RCW 70.94.430 to allow the imposition of criminal penalties against any person who knowingly makes any false material statement, representation or certification in any form, in any notice or report required by a permit, as required by 40 CFR 70.11(a)(3)(iii). This provision must include maximum penalties of not less than $10,000 per day per violation.

(3) Revise RCW 70.94.430 to allow the imposition of criminal penalties against any person who knowingly renders inaccurate any required monitoring device or method, as required by 40 CFR 70.11(a)(3)(iii). This provision must include maximum penalties of not less than $10,000 per day per violation.

(4) Delete WAC 173–401–735(3) entirely or revise it so that it refers to RCW 34.05.570(4)(b), rather than RCW 7.16.360.

(5) Revise WAC 173–401–530(2) to define an emissions unit as insignificant only if it is subject to no federally enforceable applicable requirement and delete the last sentence in WAC 173–401–200(16) ("These units and activities are exempt from permit program requirements except as provided in WAC 173–401–530.").

EFSEC

No additional changes are necessary for the EFSEC operating permits program to receive full approval other than those that may be necessary under applicable State and local law to incorporate into EFSEC's regulations all changes to the State operating permits program required for full approval.

BFCCAA

No additional changes are necessary for the BFCCAA operating permits program to receive full approval other than those that may be necessary under applicable State and local law to incorporate into BFCCAA's regulations all changes to the State operating permits program required for full approval.

NWAPA

(1) Revise NWAPA Section 132.1 to provide for maximum criminal penalties of not less than $10,000 per day per

[6] The scope of this action does not include the issuance of permits or the enforcement of standards for sewage sludge incinerators under Section 405 of the Clean Water Act, 42 USC 1345. Delegation of sewage sludge incinerator permitting under the Clean Water Act, if requested by the State, would be considered in a separate administrative action (see 40 CFR Parts 122 and 501).

[7] All changes required for Ecology to receive full approval must be made before EFSEC or any local air authority may receive full approval. In addition, in order to receive full approval, EFSEC and each local air authority must make such changes to their regulations as are necessary under applicable State and local law to incorporate into their respective regulations all required changes to Ecology's operating permits program.

violation, as required by 40 CFR 70.11(a)(3)(ii).

(2) Revise NWAPA Section 132 to allow the imposition of criminal penalties against any person who knowingly makes any false material statement, representation or certification in any form, in any notice or report required by a permit, as required by 40 CFR 70.11(a)(3)(iii). This provision must include maximum penalties of not less than $10,000 per day per violation.

(3) Revise NWAPA Section 132 to allow the imposition of criminal penalties against any person who knowingly renders inaccurate any required monitoring device or method, as required by 40 CFR 70.11(a)(3)(iii). This provision must include maximum penalties of not less than $10,000 per day per violation.

(4) Revise NWAPA § 133.1 to provide for maximum civil penalties of not less than $10,000 per day per violation in the case of violations of multiple standards by a specific emissions unit, as required by 40 CFR 70.11(a)(3).

PSAPCA

(1) Revise PSAPCA Reg. I, § 3.13(a) to provide for maximum criminal penalties of not less than $10,000 per day per violation, as required by 40 CFR 70.11(a)(3)(ii).

(2) Revise PSAPCA Reg. I, § 3.13 to allow the imposition of criminal penalties against any person who knowingly makes any false material statement, representation or certification in any form, in any notice or report required by a permit, as required by 40 CFR 70.11(a)(3)(iii). This provision must include maximum penalties of not less than $10,000 per day per violation.

(3) Revise PSAPCA Reg. I, § 3.13 to allow the imposition of criminal penalties against any person who knowingly renders inaccurate any required monitoring device or method, as required by 40 CFR 70.11(a)(3)(iii). This provision must include maximum penalties of not less than $10,000 per day per violation.

OAPCA

(1) Revise OAPCA Reg. 1, § 3.27(b)(1) to provide for maximum criminal penalties of not less than $10,000 per day per violation, as required by 40 CFR 70.11(a)(3)(ii).

(2) Revise OAPCA Reg. 1, § 3.27(b) to allow the imposition of criminal penalties against any person who knowingly makes any false material statement, representation or certification in any form, in any notice or report required by a permit, as required by 40 CFR 70.11(a)(3)(iii). This provision must include maximum penalties of not less than $10,000 per day per violation.

(3) Revise OAPCA Reg. 1, § 3.27(b) to allow the imposition of criminal penalties against any person who knowingly renders inaccurate any required monitoring device or method, as required by 40 CFR 70.11(a)(3)(iii). This provision must include maximum penalties of not less than $10,000 per day per violation.

(4) Revise the definition of "potential to emit" in OAPCA Reg. 1, § 6.00 to provide that any physical or operational limitation on the capacity of a source to emit a pollutant shall be treated as part of its design only if the limitation is *federally* enforceable (see 40 CFR 70.2 (definition of potential to emit)).

SCAPCA

(1) Revise SCAPCA Reg. I, § 2.04(B) to eliminate the limitation on the control officer's authority to request criminal penalties to cases in which a violator has failed to correct the violation after a "reasonable and/or required period of time."

(2) Revise SCAPCA Reg. I, § 2.11(A)(1) to provide for maximum criminal penalties of not less than $10,000 per day per violation, as required by 40 CFR 70.11(a)(3)(ii).

(3) Revise SCAPCA Reg. I, § 2.11(A) to allow the imposition of criminal penalties against any person who knowingly makes any false material statement, representation or certification in any form, in any notice or report required by a permit, as required by 40 CFR 70.11(a)(3)(iii). This provision must include maximum penalties of not less than $10,000 per day per violation.

(4) Revise SCAPCA Reg. I, § 2.11(A) to allow the imposition of criminal penalties against any person who knowingly renders inaccurate any required monitoring device or method, as required by 40 CFR 70.11(a)(3)(iii). This provision must include maximum penalties of not less than $10,000 per day per violation.

SWAPCA

No changes in the SWAPCA operating permits program are necessary to receive full approval other than those that may be necessary under applicable State and local law to incorporate into SWAPCA's regulations all required changes to Ecology's operating permits program.

YCCAA

Revise YCCAA Reg. I, § 2.01, to delete the requirement that violations be "knowing." Part 70 prohibits a permitting authority from including a mental state as an element of proof for civil violations (see 40 CFR 70.11(a)(i)).

This interim approval, which may not be renewed, extends until November 9, 1996. During this interim approval period, the State is protected from sanctions and EPA is not obligated to promulgate a Federal permits program in the State. Permits issued during the interim approval period of Washington's operating permits program have full standing with respect to Part 70. In addition, the 180 day time period under State law for submittal of permit applications by subject sources and the three-year time period for processing initial permit applications begin upon interim approval.

If the State fails to submit a complete corrective program for full approval by May 9, 1996, EPA will start an 18-month clock for mandatory sanctions. If the State fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA must apply sanctions. If EPA disapproves a State's corrective program, and the State has not submitted a subsequent corrective program that EPA determines corrects the deficiencies of the disapproved program within 18 months after the disapproval, then EPA must apply sanctions. In both cases, if the State has not corrected the deficiency within six months after EPA applies the first sanction, a second sanction is required. In addition, discretionary sanctions may be applied where warranted any time after the end of the interim approval period if the State has failed to submit a complete corrective program or after EPA disapproves a submitted corrective program. If the EPA has not granted full approval to the State program by November 9, 1996, EPA must promulgate, administer, and enforce a Federal permits program for Washington upon expiration of the interim approval.

III. Administrative Requirements

A. Docket

Copies of the State's submittal and other information relied upon for the final interim approval, including public comments on the proposal received and reviewed by EPA, are maintained in the docket at the EPA Regional Office. The docket is an organized and complete file of information submitted to, or otherwise considered by, EPA in the development of this final interim approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: October 28, 1994.

Chuck Clark,

Regional Administrator.

Part 70, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

2. Part 70 is amended by adding a new appendix A as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

This appendix provides information on the approval status of State and Local operating Permit Programs.

Washington.

(a) Department of Ecology (Ecology): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires November 9, 1996.

(b) Energy Facility Site Evaluation Council (EFSEC): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires November 9, 1996.

(c) Benton-Franklin Counties Clean Air Authority (BFCCAA): submitted on November 1, 1993 and amended on September 29, 1994; effective on December 9, 1994; interim approval expires November 9, 1996.

(d) Northwest Air Pollution Authority (NWAPA): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires November 9, 1996.

(e) Olympic Air Pollution Control Authority (OAPCA): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires November 9, 1996.

(f) Puget Sound Air Pollution Control Agency (PSAPCA): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires November 9, 1996.

(g) Southwest Air Pollution Control Authority (SWAPCA): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires November 9, 1996.

(h) Spokane County Air Pollution Control Authority (SCAPCA): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires November 9, 1996.

(i) Yakima County Clean Air Authority (YCCAA): submitted on November 1, 1993 and amended on September 29, 1994; effective on December 9, 1994; interim approval expires November 9, 1996.

[FR Doc. 94–27683 Filed 11–8–94; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7100

[WY–930–1430–01; WYW–83357]

Partial Revocation of Secretarial Orders of October 20, 1917, May 6, 1918, May 16, 1918, August 28, 1934, and July 12, 1939; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes five Secretarial Orders insofar as they affect 20,247 acres of public lands withdrawn for stock driveway purposes. The lands are no longer needed for this purpose, and the revocation is needed to permit disposal of the lands through exchange or sale under the authority of the Federal Land Management Policy Act. This action will open the lands to surface entry unless closed by overlapping withdrawals or temporary segregations of record. The lands have been and will remain open to mining location and mineral leasing, unless closed by temporary segregations of record.

EFFECTIVE DATE: December 9, 1994.

FOR FURTHER INFORMATION CONTACT: Duane Feick, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6127.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Secretarial Orders of October 20, 1917, May 6, 1918, May 16, 1918, August 28, 1934, and July 12, 1939, which withdrew the following public lands for stock driveway purposes, are hereby revoked insofar as they affect the following described lands:

Sixth Principal Meridian

T. 34 N., R. 70 W.,
Sec. 7, lot 4 and E½SW¼.
T. 35 N., R. 70 W.,
Sec. 21, NE¼ and N½NW¼.
T. 36 N., R. 70 W.,
Sec. 4, lots 1 and 2, S½NE¼, and SE¼.
T. 33 N., R. 72 W.,
Sec. 4, lots 6, 11, and 13 to 15, inclusive.
T. 34 N., R. 72 W.,
Sec. 15, S½SW¼ and SW¼SE¼;
Sec. 19, lots 2 and 3, E½SW¼, and S½SE¼;
Sec. 20, SW¼SW¼;
Sec. 21, NE¼ and S½S½;
Sec. 22, NW¼ and W½SW¼;
Sec. 28, all;
Sec. 29, all;
Sec. 33, N½ and SW¼.
T. 34 N., R. 73 W.,
Sec. 3, lots 2 to 4, inclusive;
Sec. 5, NE¼SW¼ and W½SE¼;
Sec. 12, W½SE¼;
Sec. 13, W½NE¼, SE¼NE¼, E½SW¼, and SE¼.
T. 35 N., R. 73 W.,
Sec. 5, SW¼NW¼ and SW¼;
Sec. 6, lots 1 to 6, inclusive, S½NE¼, SE¼NW¼, NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 8, N½NE¼, SW¼NE¼, W½, and W½SE¼;
Sec. 17, E½SW¼ and SW¼SW¼;
Sec. 18, lots 3 and 4, E½SW¼, and SE¼;
Sec. 20, W½ and S½SE¼;
Sec. 34, W½SW¼ and SE¼SW¼.
T. 35 N., R. 74 W.,
Sec. 1, lots 1 to 4, inclusive, S½NE¼, and SE¼;
Sec. 2, lots 1 to 4, inclusive;
Sec. 12, N½NE¼ and SE¼NE¼.
T. 36 N., R. 74 W.,
Sec. 22, E½;
Sec. 25, W½;
Sec. 26, all;
Sec. 27, E½;
Sec. 35, all.
T. 37 N., R. 74 W.,
Sec. 14, NW¼, N½SW¼, and SW¼SW¼;
Sec. 15, all;
Sec. 22, NE¼;
Sec. 23, NW¼NW¼ and S½SW¼;
Sec. 26, W½ and W½SE¼;
Sec. 27, E½E½;
Sec. 35, W½NE¼ and NW¼.
T. 38 N., R. 74 W.,
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 2, lots 1 to 4, inclusive, S½N½, E½SW¼, and SE¼;
Sec. 3, lots 1 to 4, inclusive, and S½N½;
Sec. 11, N½NE¼ and NE¼NW¼;
Sec. 24, E½ and E½W½;
Sec. 26, E½;
Sec. 35, E½.
T. 39 N., R. 74 W.,
Sec. 6, lots 1 to 6, inclusive, S½NE¼, SE¼NW¼, NE¼SW¼, and N½SE¼;
Sec. 19, E½NE¼;
Sec. 20, all;
Sec. 21, NW¼ and S½;
Sec. 28, N½;
Sec. 29, NE¼;
Sec. 34, E½, E½NW¼, SW¼NW¼, and SW¼;
Sec. 35, all.
T. 40 N., R. 74 W.,
Sec. 30, lots 1 to 4, inclusive, and E½W½;

Sec. 31, lots 1 to 4, inclusive, E½, and E½W¼.
T. 40 N., R. 75 W.,
Sec. 14, S½NW¼ and SW¼;
Sec. 15, S½NE¼ and SE¼;
Sec. 22, E½;
Sec. 23, N½NW¼, SW¼NW¼, N½SW¼, SW¼SW¼, and SE¼;
Sec. 24, SW¼ and W½SE¼;
Sec. 25, N½;
Sec. 26, N½NE¼.

The areas aggregate approximately 20,247 acres in Converse County.

2. At 9:00 a.m. on December 9, 1994, the lands described in paragraph 1 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9:00 a.m. on December 9, 1994 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: October 21, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–27690 Filed 11–8–94; 8:45 am]

BILLING CODE 4310–22–P

43 CFR Public Land Order 7101

[AZ–030–4210–06; AZA–26586]

Withdrawal of Public Land for the Forest Service's Clifton Ranger District Administrative Site; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 34.18 acres of public land from surface entry and mining for a period of 20 years for the use and protection of the Forest Service's Clifton Ranger District Administrative Site. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: November 9, 1994.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, 602–650–0509.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, and reserved for use by the Forest Service as an administrative site:

Gila and Salt River Meridian

Apache National Forest

T. 6 S., R. 30 E.,
Sec. 1, lot 14.

The area described contains 34.18 acres in Greenlee, County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of its mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: October 21, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–27691 Filed 11–8–94; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 110494A]

Atlantic Tuna Fisheries; Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Bluefin tuna quota transfer from the longline-south Incidental subcategory to the longline-north Incidental subcategory.

SUMMARY: NMFS transfers 5 metric tons (mt) of bluefin tuna from the longline-south Incidental subcategory to the longline-north Incidental subcategory. NMFS has determined that the fisheries landing bluefin under the longline-south Incidental subcategory will not achieve the full 1994 quota allocation. This action is being taken to extend the season for the longline-north Incidental subcategory, which will assure additional collection of biological assessment and monitoring data and increase the economic benefits from this fishery without contributing significantly to additional bluefin mortality. In addition, this action will prevent waste of bluefin tuna which might otherwise be discarded dead.

EFFECTIVE DATE: November 4, 1994.

FOR FURTHER INFORMATION CONTACT: John Kelly, 301–713–2347.

SUPPLEMENTARY INFORMATION: Bluefin tuna are currently in their fall feeding grounds in New England and Mid-Atlantic waters, so incidental catch by longline vessels operating south of 34° N. lat. is not expected to occur at high levels. The longline-north Incidental subcategory has only .8 mt remaining of its allocation of 23 mt for vessels fishing north of 34° N. lat. Once the quota is reached for this northern subcategory, any bluefin tuna incidentally taken by longline vessels must be discarded at sea. In order to prevent waste of bluefin tuna, which would otherwise be discarded dead, NMFS is transferring 5 mt of quota from the southern to the northern subcategory. This amount should be sufficient to account for incidental take of bluefin by the northern subcategory for the remainder of this year while the balance for the southern subcategory will be added to their 1995 quota.

Classification

This action is authorized by 50 CFR 285.22(i) and is exempt from review under E.O. 12866.

Dated: November 4, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–27747 Filed 11–4–94; 2:34 pm]

BILLING CODE 3510–22–F

50 CFR Part 625

[I.D. 092694B]

Summer Flounder Fishery; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, (NOAA), Commerce.

ACTION: Commercial quota transfer; correction.

SUMMARY: This document corrects a notification of commercial quota transfer (I.D. 092694B) published on Tuesday, October 4, 1994 (59 FR 50512), that announced the transfer of commercial quota under the regulations implementing the Fishery Management Plan for the Summer Flounder Fishery (FMP).

EFFECTIVE DATE: September 29, 1994.

FOR FURTHER INFORMATION CONTACT: Hannah Goodale, 508–281–9101.

Correction of Publication

Accordingly, the publication October 4, 1994, of the final rule that was the subject of FR Doc. 94–24489 is changed to correct an error in the calculation of the adjusted quota figure for the State of Connecticut as follows:

1. On page 50512, in the third column, first full paragraph, line 10, the words "384,343 lb (174,335 kg)" should be corrected to read "384,247 lb (174,292 kg)".

2. On page 50512, in the third column, first full paragraph, line 3 after the word "Connecticut.", insert the following sentence: "By publication in the **Federal Register** on June 6, 1994 (59 FR 29207), a transfer of 96 lb (44 kg) of quota from Connecticut to Delaware was made effective on June 1, 1994, and Connecticut's adjusted quota figure was 361,162 lb (163,820 kg)."

Dated: November 3, 1994.

David S. Crestin,

Acting Director, Offfice of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–27746 Filed 11–8–94; 8:45 am]

BILLING CODE 3510-22-P

50 CFR Part 675

[Docket No. 931100–4043; I.D. 110194D]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the Herring Savings Areas of the Bering Sea and Aleutian Islands management area (BSAI) to directed fishing for pollock by vessels using trawl gear. This action is necessary because the 1994 trawl bycatch allowance of Pacific herring specified for the midwater pollock fishery category in the BSAI has been reached.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), November 4, 1994, through 12 noon, A.l.t., March 1, 1995.

FOR FURTHER INFORMATION CONTACT: Michael L. Sloan, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The 1994 trawl bycatch allowance for Pacific herring specified for the midwater pollock fishery category, which is defined at § 675.21(b)(1)(iii)(A), was established as 1,419 metric tons by the final 1994 initial specifications (59 FR 7656, February 16, 1994).

The Director, Alaska Region, NMFS, has determined, in accordance with § 675.21(c)(2)(i), that the trawl bycatch allowance of Pacific herring specified for the midwater pollock fishery category has been reached. Therefore, NMFS is closing the Herring Savings Areas of the BSAI to directed fishing for pollock by vessels using trawl gear from 12 noon, A.l.t., November 4, 1994, through 12 noon, A.l.t., March 1, 1995.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 3, 1994

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–27733; Filed 11–4–94; 11:59 am]

BILLING CODE 3510-22-F

Proposed Rules

Federal Register
Vol. 59, No. 216
Wednesday, November 9, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 181

[CGD 92–065]

RIN 2115–AE37

Expanded Hull Identification Number and New Requirements for Certificates of Origin

AGENCY: Coast Guard, DOT.

ACTION: Notice of workshop and reopening of comment period.

SUMMARY: In a notice of proposed rulemaking (NPRM) published May 6, 1994, the Coast Guard proposed amendments to the regulations concerning vessel Hull Identification Numbers (HIN) and new regulations requiring Certificates of Origin for new vessels offered for sale in the United States. Comments were required to be received by September 6, 1994. The Coast Guard has received comments from various parties opposing the proposed 19 character HIN and one comment from an association seeking an extension of the comment period. This notice announces a workshop to discuss the proposed expanded HIN, and reopens the comment period on this rulemaking.

DATES: Comments must be received on or before January 9, 1995. The Workshop will be held from 9 a.m. to 1 p.m. on Thursday, December 8, 1994 in room 2415 at U.S. Coast Guard Headquarters in Washington, DC. Individuals wishing to make oral presentations at the workshop should contact Mr. Alston Colihan, as further explained under **SUPPLEMENTARY INFORMATION**, at least ten days before the workshop.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD92–065), U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593–0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. Comments on collection of information must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attn: Desk Officer, U.S. Coast Guard. Requests to make presentations at the workshop should be sent to COMMANDANT (G–NAB–6), room 1505, U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593–0001, Attn: Mr. Alston Colihan.

FOR FURTHER INFORMATION CONTACT: Mr. Alston Colihan, Auxiliary, Boating, and Consumer Affairs Division, (202) 267–0981.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD 92–065) and the specific section of the proposal to which each comment applies, and give a reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose stamped, self-address postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. All comments received after the close of the initial comment period and before the reopening of the comment period will also be considered. The Coast Guard may change the proposal in view of the comments.

Background Information

The NPRM published May 6, 1994 (59 FR 23651), proposed to expand the existing 12 character HIN to 19 characters. The additional seven characters would indicate the country code, vessel length, hull materials, principal means of propulsion, vessel type and a check digit to make alteration of an HIN more difficult.

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection of information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection of information requirements include reporting, recordkeeping, notification, labeling and other, similar requirements. Both OMB and the Coast Guard have received a number of comments opposing a 19 character HIN because of the information collection burdens that would be imposed, particularly with the calculation of the check digit. When using simple arithmetic, those calculations may take as long as 15 minutes per vessel. Some States are also opposed to a 19 character HIN because of significant costs to adapt computers and computer programs for State vessels registration and numbering systems to 19 characters. In consideration of these comments, the Coast Guard is conducting a workshop to solicit additional comments from the public and to serve as an open forum for discussing the proposed HIN regulations. The workshop will explore various alternatives to a 19 character HIN.

The NPRM also proposed to require that manufacturers issue Certificates of Origin for new vessels offered for sale in the United States. The workshop will not include a discussion of those proposed requirements. Due to limited time, and in an effort to ensure that the workshop is as productive as possible, discussion will be strictly limited to the issues raised by the proposed expansion of the HIN.

Workshop Format

The workshop format will consist of presentations by a panel, followed by discussions and a question and answer period. The workshop is open to the public, however, due to limited time, the Coast Guard will limit the number and duration of panel presentations. Panelists will be allowed seven minutes to make their presentation. The Coast Guard will select panel members in a manner designed to ensure the broadest possible representation of viewpoints. The Coast Guard specifically solicits representatives of the following groups to participate in the workshop as panelists:

The International Organization for Standardization (ISO)

The National Association of State Boating Law Administrators
The National Marine Manufacturers Association
The American Boat and Yacht Council
The National Association of Marine Investigators
The North American Paddlesports Association

Those wishing to participate as a panel member and give an oral presentation should submit their name, address, telephone number, organization represented (if any), and provide a summation of their presentation at least ten days prior to the workshop, as directed under **ADDRESSES.** Individuals selected to be panelists will be notified by the Coast Guard. Any changes in the location or time of the workshop will be announced in the **Federal Register**.

Dated: November 3, 1994.

G. A. Pennington,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 94–27758 Filed 11–8–94; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT–17–1–6536; A–1–FRL–5103–9]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; VOC RACT Catch-Ups

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Revisions to the State Implementation Plan (SIP) for the State of Connecticut were received by the Environmental Protection Agency (EPA) on January 5, 1994. The intended effect of the revisions was to change three regulations and to add one regulation, all of which require the implementation of reasonably available control technology (RACT) for certain sources of volatile organic compounds (VOCs), as required by the Clean Air Act, as amended in 1990 (the Act). The EPA has evaluated these modifications to Connecticut's regulations and by this notice is proposing to approve the changes to the three existing regulations as part of the SIP. EPA is also proposing a limited approval/limited disapproval of the new regulation.

DATES: Comments must be received on or before December 9, 1994. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203–2211. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

FOR FURTHER INFORMATION CONTACT: Steven A. Rapp, (617) 565–9024.

SUPPLEMENTARY INFORMATION: On January 5, 1994, the Connecticut DEP submitted a revision to its SIP. The revision consists of changes made pursuant to the requirements of § 182(b)(2) of the Act to the following Connecticut Regulations for the Abatement of Air Pollution:

§§ 22a–174–20(s), Miscellaneous Metal Parts and Products,
§§ 22a–174–20(v), Graphic Arts Rotogravures and Flexography,
§§ 22a–174–20(ee), Reasonably Available Control Technology for Large Sources, and
§ 22a–174–32, Reasonably Available Control Technology for Volatile Organic Compounds.

I. Background

Under the pre-amended Clean Air Act (i.e., the Clean Air Act before the enactment of the amendments of November 15, 1990), ozone nonattainment areas were required to adopt RACT rules for sources of VOC emissions. EPA issued three sets of control technique guideline (CTG) documents, establishing a "presumptive norm" for RACT for various categories of VOC sources. The three sets of CTGs were: (1) Group I—issued before January 1978 (15 CTGs); (2) Group II—issued in 1978 (9 CTGs); and (3) Group III—issued in the early 1980's (5 CTGs). Those sources not covered by a CTG were called non-CTG sources. EPA determined that the area's SIP-approved attainment date established which RACT rules the area needed to adopt and implement. Under Section 172(a)(1), ozone nonattainment areas were generally required to attain the ozone standard by December 31, 1982. Those areas that submitted an attainment demonstration projecting attainment by that date were required to adopt RACT for sources covered by the Group I and II CTGs. Those areas that sought an extension of the attainment date under Section 172(a)(2) to as late as December 31, 1987 were required to adopt RACT for all CTG sources and for all major (i.e., 100 ton per year or more of VOC emissions) non-CTG sources.

Under the pre-amended Clean Air Act, Connecticut was designated as nonattainment for ozone and sought an extension of the attainment date under Section 172(a)(2) to December 31, 1987. Therefore, the State was required to adopt RACT for all CTG sources and for all major (i.e., 100 ton per year or more of VOC emissions) non-CTG sources. However, the State of Connecticut did not attain the ozone standard by the approved attainment date. On May 25, 1988, EPA notified the Governor of Connecticut that portions of the SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, amendments to the Clean Air Act were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. §§ 7401–7671q. In Section 182(a)(2)(A) of the amended Act, Congress adopted the requirement that pre-enactment ozone nonattainment areas that retained their designation of nonattainment and were classified as marginal or above fix their deficient RACT rules for ozone by May 15, 1991. All of Connecticut, with the exception of the portion of Connecticut located in the New York-New Jersey-Long Island Consolidated Statistical Metropolitan Area (NY-NJ-CT CMSA), was classified as serious nonattainment for ozone. The remaining portion of the State, i.e., the Connecticut portion of the NY-NJ-CT CMSA, was classified as severe nonattainment for ozone. 56 FR 56694 (Nov. 6, 1991). The State submitted revisions to meet the RACT fix-up requirement and EPA approved those revisions to the Connecticut SIP on October 18, 1991 (56 FR 52205).

Section 182(b)(2) of the amended Act requires States to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above. There are three parts to the Section 182(b)(2) RACT requirement: (1) RACT for sources covered by an existing CTG—i.e., a CTG issued prior to the enactment of the 1990 amendments to the Act; (2) RACT for sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG, i.e., non-CTG sources. This RACT requirement applies to nonattainment areas that were previously exempt from certain RACT requirements to "catch

up" to those nonattainment areas that became subject to such requirements during an earlier period. In addition, it requires newly designated ozone nonattainment areas to adopt RACT rules consistent with those for previously designated nonattainment areas.

Since Connecticut was previously required to adopt RACT regulations for all the CTG and major non-CTG sources to meet the RACT "catch-up" requirement, the State did not need to adopt any additional RACT rules. However, under Section 182 of the Act, the major source definition for serious and severe nonattainment areas was lowered to include sources that have a potential to emit greater than 50 or greater than 25 tons per year of VOC, respectively. Therefore, the State needed to lower the applicability cutoff of its non-CTG and/or relevant CTG-based regulations to include newly classified major sources in these categories.

VOCs contribute to the production of ground level ozone and smog. These rules were adopted as part of an effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone. The following is EPA's evaluation and proposed action for the changes to Connecticut's Regulations for the Abatement of Air Pollution, subsection 22a–174–20(s), subsection 22a–174–20(v), subsection 22a–174–20(ee), and Section 22a–174–32.

II. EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the Act and EPA regulations, as found in section 110 and Part D of the Act and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). EPA's interpretation of these requirements, which forms the basis for today's action, appears in various EPA policy guidance documents. The specific guidance relied on for this action is referenced within the technical support document and this notice. For the purpose of assisting State and local agencies in developing RACT rules, EPA prepared a series of CTG documents. The CTGs are based on the underlying requirements of the Act and specify presumptive norms for RACT for specific source categories. EPA has not yet developed CTGs to cover all sources of VOC emissions. Further interpretations of EPA policy are found in, but not limited to, the following: (1) The proposed Post-1987 ozone and carbon monoxide policy, 52 FR 45044 (November 24, 1987); (2) the document entitled, "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice," otherwise known as the "Blue Book" (notice of availability was published in the **Federal Register** on May 25, 1988 and in the existing CTGs); and (3) the "Model Volatile Organic Compound Rules for Reasonably Available Technology," (Model VOC RACT Rules) issued as a staff working draft in June of 1992. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP. The changes to Connecticut's VOC regulations that were included in the January 5, 1994 submittal are briefly summarized below.

Subsection 22a–174–20(s)

This regulation was amended to include an exemption for noncompliant coatings used in amounts less than 55 gallons in the aggregate for any consecutive 12 month period at a miscellaneous metal parts facility. The change is consistent with EPA's August 10, 1990 policy memorandum from G. T. Helms, Chief of the Ozone/Carbon Monoxide Programs Branch of the Office of Air Quality Planning and Standards, entitled, "Exemption for Low-Use Coatings." Section 193 of the Clean Air Act (i.e., the General Savings Clause), requires that any regulation in effect before the date of the enactment of the Clean Air Act Amendments of 1990 in any nonattainment area may only be modified if the modification insures equivalent or greater reductions of the same pollutant. Although the proposed change to 22a–174–20(s) represents a small relaxation of an existing control requirement, the requirements of Section 193 are met by the reductions resulting from other changes being proposed in this notice.

Subsection 22a–174–20(v)

This regulation was amended to define RACT for graphic arts sources with potential emissions from all printing operations of 50 tons or more per year in the serious ozone nonattainment area or, 25 tons or more per year in the severe ozone nonattainment area, which were not previously subject to the rule. The adopted regulation maintains the applicability of any printing line with actual emissions of 40 pounds or more per day. This change is consistent with the requirements of Section 182 of the Act.

Subsection 22a–174–20(ee)

Most of this subsection has been deleted and replaced with a reference to the new Section 32, entitled,"Reasonably Available Control Technology for Volatile Organic Compounds." The amended regulation removes the previous major source limits on applicability and refers all sources of VOC to Section 32. Sources previously subject to 22a–174–20(ee) that have enforceable consent orders or permits which currently define RACT at those facilities will continue to be regulated by those orders until Connecticut decides otherwise.

Section 22a–174–32

For major non-CTG sources of VOCs, the addition of this section sets forth both presumptive RACT norms and processes by which RACT can be established for those sources that cannot meet the presumptive norms. However, Section 182(b)(2) of the Clean Air Act requires that a SIP revision be submitted by November 15, 1992 including "provisions to require the implementation of reasonably available control technology * * *" In addition, the necessary SIP revision is required to "provide for the implementation of the required measures as expeditiously as practicable but no later than May 31, 1995." Since the first two options of Section 22a–174–32 define presumptive norms for RACT, and are consistent with EPA's Model VOC RACT Rules for "Other Facilities that Emit Volatile Organic Compounds," that portion of the regulation meets the requirements of Section 182 and is approvable. However, since the third and fourth options describe a process by which RACT can be defined but do not specifically define RACT for each source to which such options apply, that portion of the rule is not approvable. Therefore, EPA is proposing a limited approval/limited disapproval of Section 22a–174–32. To receive full approval, Connecticut will need to define explicitly, and have approved by EPA, RACT for all of those sources which do not conform to the presumptive RACT options outlined in the regulation. Alternatively, if it is determined that none of the affected sources will rely on the third or fourth process options contained in the rule to implement RACT, Section 22a–174–32 can be fully approved upon Connecticut making such a demonstration.

Proposed Action

EPA has evaluated Connecticut's submittal for consistency with the Act, EPA regulations, and EPA policy. EPA

has determined that the changes made to subsection 22a–174–20(s), subsection 22a–174–20(v), and subsection 22a–174–20(ee) of Connecticut's Regulations for the Abatement of Air Pollution meet the requirements of the Act. Therefore, EPA is proposing approval under Section 110(k)(3) of those changes.

However, EPA has determined that the proposed Section 22a–174–32 does not meet all of the Act's requirements for the reasons described above. EPA believes that approval of the submitted rule will strengthen the SIP but because of the above-mentioned deficiencies, the rule does not meet the requirements of Section 182(b)(2) of the CAA. In light of such deficiencies, EPA cannot grant full approval of this rule under section 110(k)(3) and Part D. However, EPA may grant a limited approval of the submitted rule under Section 110(k)(3) and EPA's authority pursuant to Section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also includes a limited disapproval, due to the fact that this rule does not meet the requirement of Section 182(b)(2) because of the deficiencies noted above. Thus, in order to strengthen the SIP, EPA is proposing a limited approval of Connecticut's submitted Section 22a–174–32 under Section 110(k)(3) and 301(a) of the CAA.

As stated, EPA is also proposing a limited disapproval of this rule under Sections 110(k)(3) and 301(a) of the Act because the rule contains deficiencies that have not been corrected as the Act requires. Under Section 179(a)(2), if the Administrator disapproves a submission under Section 110(k) for an area designated nonattainment based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in Section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18-month period referred to in Section 179(a) will begin at the effective date established in this limited disapproval. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c).

EPA's evaluation of all the submitted regulations is detailed in a memorandum, dated June 2, 1994 entitled "Technical Support Document—Connecticut—VOC RACT Catch-ups." Copies of that document are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this action.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables. The Office of Management and Budget has exempted this action from review under Executive Order 12866.

Under the Regulatory Flexibility Act, 5 U.S.C. § 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. §§ 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under Section 110 and subchapter I, Part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. § 7410(a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 6, 1994.

John P. Devillars,

Regional Administrator, Region I.

[FR Doc. 94–27684 Filed 11–8–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 514, 580 and 581

[Docket Nos. 93–22 and 94–26]

Coloading Practices by Non-Vessel-Operating Common Carriers; Shipper Affiliate Access to Service Contracts and Inquiry into Statutory Basis for Coloading Practices and Possible Section 16 Exemption for Coloading

AGENCY: Federal Maritime Commission.

ACTION: Notice of inquiry.

SUMMARY: The Proposed Rule in Docket No. 93–22, which would modify and clarify the Federal Maritime Commission's coloading regulations, is held in abeyance, pending an inquiry to explore whether existing coloading practices are consistent with statutory requirements, and, if not, whether an exemption proceeding should be initiated. The purpose of the Inquiry is to serve notice that the Commission has preliminarily determined that coloading practices appear to contravene the tariff filing requirements, and to provide another opportunity to the interested public to comment on whether, absent an exemption under section 16 of the 1984 Act, a statutory basis for such practices exists. The Inquiry also solicits comments on whether the Commission should initiate a proceeding under section 16 to exempt some aspect of coloading activity from otherwise applicable requirements if no other statutory basis for coloading exists.

DATES: Comments due on or before December 27, 1994.

ADDRESSES: Send Comments (original and 20 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission ("Commission") initiated Docket No. 93–22, *Coloading Practices by Non-*

Vessel-Operating Common Carriers; Shipper Affiliate Access to Service Contracts, for the purpose of addressing the practice of non-vessel-operating common carriers ("NVOCCs") of rating combined or consolidated cargoes under privately arranged rates rather than the rates in their tariffs. In its Notice of Proposed Rulemaking ("NPR" or "Proposed Rule"), the Commission noted that its current rules governing this practice, known as coloading, which were promulgated in 1985, have been variously interpreted by the NVOCC industry, due in part to apparent ambiguities in the rule's definitions and attendant enumeration of responsibilities of coloading NVOCCs.

Accordingly, the Commission proposed to revise the definition of consolidated cargo shipments which qualify to be rated off-tariff as coload cargo.

In the NPR, the Commission expressed its concern about diverse interpretations of and ambiguities in its coloading rules as reflected in coloading activity since 1985. The Commission also noted that a larger volume of NVOCC-carried cargo was being rated as coload cargo than was anticipated when the coload regulations were crafted, possibly resulting in an inordinate percentage of NVOCC shipments being rated irrespective of the NVOCCs' tariff rates. With coloading being used as a device to gain access to other NVOCCs' service contracts, the Commission noted that consolidated cargoes being deemed coload cargo by some NVOCCs now include multiple full containerloads ("FCLs"), not just the small, less-than-containerload ("LCL") shipments that constituted the objective of the Commission's current coloading rule. The Commission was also concerned that there was too wide a variety of interpretations of the regulatory responsibilities of coloading NVOCCs, with some NVOCCs assiduously adhering to the regulations and others adopting practices based on looser interpretations of those somewhat ambiguous rules.

The NPR sought comment on:

1. A proposal to redefine the term "coloading" to mean the combining of cargo pursuant to the rates, charges and terms of an agreement (*vis-a-vis* a tariff), which agreement must be in writing and made available to the Commission;

2. An alternative proposal limiting coloading to LCL cargo;

3. A proposal to prohibit coloaded cargo from being carried under a service contract; and

4. A proposal to define an "affiliate" having access to service contracts.

The Commission also sought comment on:

5. Whether to restrict applicability of time-volume rates to coloaded cargo; and

6. Whether to proscribe coloading altogether.

The Proposed Rule generated 58 comments. Conferences of vessel-operating common carriers ("VOCCs"), and some larger NVOCCs, generally supported the Proposed Rule, but urged that the Commission go further and ban coloading altogether. Some of these entities argued that the Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq.* ("1984 Act"), provided no basis either for coloading or for unaffiliated NVOCCs jointly having access to service contracts other than through the statutorily sanctioned mechanism of a shippers' association, 46 U.S.C. app. 1702(24).

Most of the comments, however, were from smaller to mid-sized NVOCCs, who opposed the Proposed Rule. With few exceptions, these parties did not address the legal ramifications of the Proposed Rule, but instead focused on what they believed to be the practical impact of the proposal on their operations. The NVOCC community's comments collectively conveyed the prevalence of coloading, estimated as 40% or more of NVOCC carryings by one commenter, and characterized coloading practices as highly beneficial to the many smaller NVOCCs who rely on coloading to remain competitive.

The threshold question remains, however, whether the very concept of coloading is, or can be made, consistent with the 1984 Act. Section 8(a)(1) of the Act, 46 U.S.C. app. 1707(a)(1), states: "[E]ach common carrier and conference shall file with the Commission, and keep open to public inspection, tariffs showing all its rates, charges, classifications, rules, and practices * * * ." Both NVOCCs and VOCCs are defined in the 1984 Act as "common carriers." 46 U.S.C. app. 1702 (17), (18). By defining NVOCCs as common carriers, Congress quite intentionally determined to subject them to the tariff-filing provisions of section 8. The Senate Commerce Committee Report advised that "all 'common carriers,' including both vessel operators and non-vessel operators," would have to publish tariffs under the bill. S. Rep. No. 3, 98th Cong., 1st Sess. 30 (1983). That NVOCCs file tariffs under the 1984 Act is not an accidental by-product of a complicated regulatory regime; it is a deliberate statutory mandate to which the Commission, in implementing that statute, must adhere.

In 1990, Congress reiterated its intention that NVOCCs file tariffs when it enacted the Non-Vessel-Operating Common Carrier Amendments of 1990 ("1990 Amendments"), section 710 of Pub. L. No. 101–595. The 1990 Amendments were based upon the principle of NVOCC tariff filing and were devised in part to secure NVOCC compliance with section 8 of the 1984 Act.

Thus, the current statutory scheme not only includes provisions for NVOCC tariff filing, but has used that principle as the premise for other statutory proscriptions and obligations. Meanwhile, the 1984 Act makes no special provision for, or even acknowledgement of, consolidators and coloading. The Commission rejects the arguments of some NVOCCs that this is a signal that Congress intended coloading activity to remain unfettered by regulation or excused from the general statutory scheme. The law on its face effectively mandates that an NVOCC include in its tariff *all* rates and charges. Those would include not only those charged the underlying shipper, but also any rate charged another NVOCC, whatever its arrangement with that NVOCC may be. An NVOCC is given no express statutory authority to charge off-tariff rates or make private arrangements for the transportation of cargo in its capacity as a common carrier.

The Commission therefore makes the preliminary determination that the off-tariff rating of cargo by NVOCCs under the rubric of coloading contravenes the tariff-filing requirement of section 8 of the 1984 Act.[1] If that is the case, there would appear to be no present statutory basis for either the Proposed Rule on coloading or the Commission's existing coloading rules as well.

Before disposing of Docket No. 93–22 in accordance with these conclusions, however, the Commission has determined to provide interested parties one final opportunity to offer legal arguments as to whether coloading practices are currently consistent with section 8. The purpose of this endeavor is to ensure that the Commission has the benefit of all possible statutory interpretations on this issue. The policy arguments for and against coloading, which were more than adequately

[1] Another concern of the Commission, raised in the NPR, is that Congress established the shippers' association mechanism as the means by which unaffiliated shippers may jointly access service contracts. The NPR also expressed the view that the 1984 Act contemplates that service contract rates are available only to the shipper signatory to the contract. These issues were adequately addressed by the commenters on the Proposed Rule. Further comment on the statutory basis for coloading activity is therefore solicited only as it relates to the issue of section 8's tariff filing requirement.

explored in the comments on the Proposed Rule, should not be reiterated in this proceeding.

If, after consideration of comments received in response to this Notice, the Commission remains unpersuaded that there is a present statutory basis for coloading, it would be its intention to explore whether a section 16 exemption is appropriate by initiating a separate proceeding under section 16 of the 1984 Act, 46 U.S.C. app. 1715, following this Inquiry. That section provides:

> The Commission, upon application or on its own motion, may by order or rule exempt for the future any class of agreements between persons subject to this Act or any specified activity of those persons from any requirement of this Act if it finds that the exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory, result in a substantial reduction in competition, or be detrimental to commerce. The Commission may attach conditions to any exemption and may, by order, revoke any exemption. No order or rule of exemption or revocation of exemption may be issued unless opportunity for hearing has been afforded interested persons and departments and agencies of the United States.

To this end, the Commission seeks input from interested parties on whether a section 16 exemption proceeding should be initiated to determine if some form and degree of coloading activity should be exempted from the requirements of section 8 or other relevant provisions of the 1984 Act. Short of remedial legislation, section 16 would appear to provide the only possible avenue for excusing coloading NVOCCs from the otherwise applicable provisions of the 1984 Act, should those provisions be found to preclude existing coloading practices.

If the Commission initiates a section 16 proceeding, whether an exemption is ultimately deemed appropriate for coloading activities will depend on several factors. A threshold consideration is the scope of coloading activity which is proposed to be exempted. Is relief required for LCL coloading only, or also for FCL coloading by NVOCCs? How common is the off-tariff rating of FCL cargo as coload cargo? In assessing the need and desirability of coloading, the Commission is also desirous of ascertaining the extent to which the discount rates achieved through coloading inure to the benefit of the underlying shippers themselves, in addition to the coloading NVOCCs.

Many NVOCCs commenting on the Proposed Rule raised the issue of certain VOCC space-chartering arrangements, which include off-tariff compensation, and which were likened to NVOCC coloading arrangements. Accordingly, the Commission seeks views on whether such arrangements by VOCCs are inconsistent with the 1984 Act and also whether those activities should be addressed in any forthcoming section 16 exemption proceeding.

The major determinant on the appropriateness of a section 16 exemption would be the applicability of the specific criteria listed in that section. Regardless of the fervency with which coloading NVOCCs argue that coloading is essential to their operations, no exemption may issue if doing so would substantially impair the Commission's regulatory responsibilities, result in unjust discrimination (such as between shippers, or between carriers), or fail to meet the other statutorily imposed criteria. Commenters are therefore urged to address, albeit on a preliminary basis, how exemption of the various categories of coloading or other activity, discussed *supra*, would or would not meet the section 16 criteria. The Commission emphasizes that the reason for this proceeding is to give the interested public the opportunity to address these legal issues, and not merely to reiterate preferences based on the financial interests of the commenters.

The preliminary determinations to find coloading practices inconsistent with the 1984 Act (absent a formal section 16 exemption) and to initiate a separate section 16 exemption proceeding following this Inquiry, may be revised, if comments responding to this notice persuade the Commission that those determinations are incorrect. The scope and breadth of any exemption proceeding to be initiated may also be expected to reflect the arguments advanced by commenting parties. During the pendency of this proceeding, the Proposed Rule will remain in abeyance, and will be reconsidered should a resolution of these issues not result from this Inquiry.

Therefore, *it is ordered*, That this Notice of Inquiry be published in the **Federal Register**; and

It is further ordered, That the Proposed Rule in Docket No. 93–22 is held in abeyance pending further notice.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–27756 Filed 11–8–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[PR Docket No. 92–167; RM–7680; FCC 94–274]

Special Temporary Licensing Procedure for Visiting Foreign Amateur Operations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; termination.

SUMMARY: This action terminates the proposal in this proceeding to amend the amateur service rules to provide a temporary licensing procedure for amateur operators, such as tourists and convention attendees, so that they can operate their amateur stations during brief visits to the United States. The action is necessary so that the matter will not remain in a pending status. The effect of this termination is that foreign amateur operators will continue to use the current means of obtaining operating authority, that is, obtaining a United States or a reciprocal license.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, adopted October 24, 1994, and released November 2, 1994. The complete text of this Commission action is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554. The complete text of this Memorandum Opinion and Order may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 2100 M Street, NW., Suite 140, Washington, DC 20037. Telephone number (202) 857–3800.

Summary of Memorandum Opinion and Order

1. The Notice of Proposed Rule Making in FCC 92–346, 57 FR 37758, published August 20, 1992, in this proceeding, addresses a need that visiting foreign amateur operators have for a convenient procedure by which they can obtain authority to operate their amateur stations while they are here in the United States for brief visits.

2. Commenters were concerned that language barriers might pose a problem for volunteer examiners who would be required to verify the foreign amateur operator's license. Also raised in the

comments was the matter of whether the volunteer examiner system should be used for the purpose of authorizing visiting foreign amateur operators. Another concern was that authorizing operation by visitors from countries that do no currently have reciprocal agreements with the United States might reduce the incentive for those countries to enter into such agreements.

3. The Commission said that because of the concerns expressed, the amateur service rules would not be amended as proposed. The Commission recognizes, however, the need a convenient licensing procedure for visiting foreign amateur operators. Other ways to meet the need, therefore, will continue to be explored. The Commission said that, in particular, it would work to ensure the reciprocal treatment of United States amateur operators, whether through bilateral or multilateral arrangements.

4. A related petition for rule making (RM–7680), filed by Stephen R. Hutchins, was dismissed without prejudice because the Commission did not want to retain it in a pending status while various international negotiations (such as the mutual recognition of Conference of Europeene des Administrations de la Post et Telecommunication (CEPT) licenses) are being pursued.

5. This Memorandum Opinion and Order is issued under the authority of 47 U.S.C. 154(i).

List of Subjects in 47 CFR Part 97

Amateur radio, Examinations, Radio, Treaties.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–27757 Filed 11–8–94; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 59, No. 216
Wednesday, November 9, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

November 4, 1994.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 690–2118.

Extension

• Agricultural Marketing Service
Irish Potatoes Grown in Certain Designated Counties in Idaho and Malheur County, Oregon-Marketing Order No. 945
FV–131, FV–132, FV–132A, FV–133
Recordkeeping; on occasion, monthly; biennially
Farms, businesses or other for-profit; 60,903 responses; 387 hours
Teresa L. Hutchinson (503) 326–2724

• Agricultural Marketing Service
Poultry Market News Reports
PY–90
Weekly; monthly
Businesses or other for-profit; small businesses or organizations; 212,740 responses; 17,657 hours
Grover T. Hunter (202) 720–6911

Revision

• Farmers Home Administration
7 CFR 1948–C, Intermediary Relending Program
FmHA 1948–1, 3, 4
Recordkeeping; on occasion
State or local governments; businesses or other for-profit; non-profit institutions; small businesses or organizations; 4,922 responses; 17,122 hours
Jack Holston (202) 720–9736

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 94–27769 Filed 11–8–94; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Newspapers To Be Used for Publication of Legal Notice of Appealable Decisions and Publication of Notice on Proposed Actions for Southern Region; Alabama, Kentucky, Georgia, Tennessee, Florida, Louisiana, Mississippi, Virginia, West Virginia, Arkansas, Oklahoma, North Carolina, South Carolina, Texas, Puerto Rico

AGENCY: Forest Service, USDA.

ACTION: Notice and correction.

SUMMARY: Deciding Officers in the Southern Region will publish notice of decisions subject to administrative appeal under 36 CFR 217 in the legal notice section of the newspapers listed in the Supplementary Information section of this notice. As provided in 217.5(d), the public shall be advised, through **Federal Register** notice, of the principal newspaper to be utilized for publishing legal notices of decisions. Newspaper publication of notices of decisions is in addition to direct notice of decisions to those known to be interested in or affected by a specific decision. The Responsible Official under 36 CFR part 215 gave annual notice in the **Federal Register** published in May 23, 1994, of principal newspapers to be utilized for publishing notices of proposed actions and of decisions subject to appeal under 36 CFR part 215. The list of newspapers to be used for 215 notice and decision is corrected.

DATES: Use of these newspapers for purposes of publishing legal notices of decisions subject to appeal under 36 CFR part 217 and the use of the corrected newspapers listed under 36 CFR part 215 shall begin on or after the date of this publication.

FOR FURTHER INFORMATION CONTACT: Jean Paul Kruglewicz, Regional Appeals Coordinator, Southern Region, Planning and Budget, 1720 Peachtree Road, NW, Atlanta, Georgia 30367–9102, Phone: 404–347–4867.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Southern Region will give legal notice of decisions subject to appeal under 36 CFR Part 217 in the following newspapers which are listed by Forest Service Administrative unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the principal newspaper that will be utilized for publishing the legal notices of decisions. Additional newspapers listed for a particular unit are those newspapers the Deciding Officer expects to use for purposes of providing additional notice. The timeframe for appeal shall be based on the date of publication of the legal notice of the decision in the principal newspaper.

The following newspaper will be used to provide notice.

Southern Region

Regional Forester Decisions

affecting National Forest System lands in more than one state of the 13 states of the Southern Region and the Commonwealth of Puerto Rico.
Atlanta Journal, published daily in Atlanta, GA

Southern Region

Regional Forester Decisions

affecting National Forest System lands in only one state of the 13 states of the Southern Region and the Commonwealth of Puerto Rico will appear in the principal newspaper elected by the National Forest (s) of that state.

National Forests in Alabama, Alabama

Forest Supervisor Decisions

Montgomery Advertiser, published daily in Montgomery, AL

District Rangers Decisions

Bankhead Ranger District: Northwest Alabamian, published weekly (Monday & Thursday) in Haleyville, AL
Conecuh Ranger District: The Andalusia Star, published daily (Tuesday through Saturday) in Andalusia, AL
Oakmulgee Ranger District, The Tuscaloosa News, published daily in Tuscaloosa, AL
Shoal Creek Ranger District: The Anniston Star, published daily in Anniston, AL
Talladega Ranger District: The Daily Home, published daily in Talladega, AL
Tuskegee Ranger District; Tuskegee News, published weekly (Thursday) in Tuskegee, AL

Caribbean National Forest, Puerto Rico

Forest Supervisor Decision

El Nuevo Dia, published daily in Spanish in San Juan, PR, San Juan Star, published daily in San Juan, PR

District Ranger Decisions

El Horizonte, published weekly (Wednesday) in Fajardo, PR

Chattachoochee-Oconee National Forest, Georgia

Forest Supervisor Decisions

The Times, published daily in Gainesville, GA

District Ranger Decisions

Armuchee Ranger District: Walker County Messenger, published bi-weekly (Wednesday & Friday) in LaFayette, GA
Toccoa Ranger District: The News Observer published weekly (Wednesday) in Blue Ridge, GA
Chestatee Ranger District: Dahlonega Nugget, published weekly (Thursday) is Dahlonega, GA
Brasstown Ranger District: North Georgia News, published weekly (Wednesday) in Blairsville, GA
Towns County Herald, published weekly (Thursday) in Hiawesse, GA
Tallulah Ranger District: Clayton Tribune, published weekly (Thursday) in Clayton, GA
Chattooga Ranger District: Northeast Georgian, published weekly (Tuesday) in Cornelia, GA
Toccoa Record, published weekly (Thursday) in Toccoa, GA
The Telegraph, published weekly (Wednesday) in Cleveland, GA
Cohutta Ranger District: Chatsworth Times, published weekly (Tuesday) in Chatsworth, GA
Oconee Ranger District: Monticello News, published weekly (Thursday) in Monticello, GA

Cherokee National Forest, Tennessee

Forest Supervisor Decisions

Knoxville News Sentinel, published daily in Knoxville, TN (covering McMinn, Monroe, and Polk Counties)
Johnson City Press, published daily in Johnson City, TN (covering Carter, Cocke, Greene, Johnson, Sullivan, Unicoi and Washington Counties)

District Rangers Decisions

Ocoee Ranger District: Polk County News, published weekly (Wednesday) in Benton, TN
Hiwassee Ranger District: Daily Post-Athenian, published daily (Monday–Friday) in Athens, TN
Tellico Ranger District: Monroe County Advocate, published weekly (Thursday) in Sweetwater, TN
Nolichucky Ranger District: Greenville Sun, published daily (Monday–Saturday) in Greenville, TN
Unaka Ranger District: Johnson City Press, published daily in Johnson City, TN
Watauga Ranger District: Elizabethton Star, published daily (Sunday–Friday) in Elizabethton, TN

Daniel Boone National Forest, Kentucky

Forest Supervisor Decisions

Lexington Herald-Leader, published daily in Lexington, KY

District Rangers Decisions

Morehead Ranger District: Morehead News, published bi-weekly (Tuesday and Friday) in Morehead, KY
Stanton Ranger District: The Clay City Times, published weekly (Thursday) in Clay City, KY
Berea Ranger District: Jackson County Sun, published weekly (Thursday) in McKee, KY
London Ranger District: The Sentinel-Echo, published tri-weekly (Monday, Wednesday, and Friday) in London, KY
Somerset Ranger District: Commonwealth-Journal, published daily (Sunday through Friday) in Somerset, KY
Stearns Ranger District: McCreary County Record, published weekly (Tuesday) in Whitley City, KY
Redbird Ranger District: Manchester Enterprise, published weekly (Thursday) in Manchester, KY

National Forests in Florida, Florida

Forest Supervisor Decisions

The Tallahassee Democrat, published daily in Tallahassee, FL

District Rangers Decisions

Apalachicola Ranger District: The Weekly Journal, published weekly (Wednesday) in Bristol, FL
Lake George Ranger District: The Ocala Star Banner, published daily in Ocala, FL
Osceola Ranger District: The Lake City Reporter, published daily (Monday–Saturday) in Lake City, FL
Seminole Ranger District: The Daily Commercial, published daily in Leesburg, FL
Wakulla Ranger District: The Tallahassee Democrat, published daily in Tallahassee, FL

Francis Marion & Sumter National Forest, South Carolina

Forest Supervisor Decisions

The State, published daily in Columbia, SC

District Rangers Decisions

Enoree Ranger District: Newberry Observer, published tri-weekly (Monday, Wednesday, and Friday) Newberry, SC
Andrew Pickens Ranger District: Seneca Journal and Tribune, published bi-weekly (Wednesday and Friday) in Seneca, SC
Long Cane Ranger District: The State, published daily in Columbia, SC
Wambaw Ranger District: News and Courier, published daily in Charleston, SC
Witherbee Ranger District: News and Courier, published daily in Charleston, SC
Tyger Ranger District: The Union Daily Times, published daily in Union, SC

George Washington National Forest, Virginia

Forest Supervisor Decisions

Daily News Record, published daily (except Sunday) in Harrisonburg, VA

District Rangers Decisions

Lee Ranger District: Shenandoah Valley Herald, published weekly (Wednesday) in Woodstock, VA
Warm Springs Ranger District: The Recorder, published weekly (Thursday) in Monterey, VA
Pedlar Ranger District: News-Gazette, published weekly (Wednesday) in Lexington, VA
James River Ranger District: Virginian Review, published daily in Covington, VA
Deerfield Ranger District: Daily News Leader, published daily in Staunton, VA
Dry River Ranger District: Daily News Record, published daily (except Sunday) in Harrisonburg, VA

Jefferson National Forest, Virginia

Forest Supervisor Decisions

Roanoke Times & World-News, published daily in Roanoke, VA

District Rangers Decision

Blacksburg Ranger District: Roanoke Times & World-News, published daily in Roanoke, VA

Monroe Watchman, published weekly (Thursday) in Union, WV (only for those decisions in West VA—notice will be published in the Roanoke Times and Monroe Watchman.)

Glenwood Ranger District: Roanoke Times & World-News, published daily in Roanoke, VA

New Castle Ranger District: Roanoke Times & World-News, published daily in Roanoke, VA

Monroe Watchman, published weekly (Thursday) in Union, WV (only for those decisions in West VA—notice will be published in the Roanoke Times and Monroe Watchman.)

Mount Rogers National Recreation Area: Bristol Herald Courier, published daily in Bristol, VA

Clinch Ranger District: Kingsport-Times News, published daily in Kingsport, TN

Wythe Ranger District: Southwest Virginia Enterprise, published bi-weekly (Wednesday and Saturday) in Wytheville, VA

Kisatchie National Forest, Louisiana

Forest Supervisor Decisions

Alexandria Daily Town Talk, published daily in Alexandria, LA

District Ranger Decisions

Caney Ranger District: Minden Press Herald, published daily in Minden, LA

Homer Guardian Journal, published weekly (Wednesday) in Homer, LA

Catahoula Ranger District: Alexandria Daily Town Talk, published daily in Alexandria, LA

Colfax Chronicle, published weekly (Wednesday) in Colfax, LA

Evangeline Ranger District: Alexandria Daily Town Talk, published daily in Alexandria, LA

Kisatchie Ranger District: Natchitoches Times, published bi-weekly (Sunday and Wednesday) in Natchitoches, LA

Vernon Ranger District: Leesville Leader, published daily in Leesville, LA

Winn Ranger District: Winn Parish Enterprise, published weekly (Wednesday) in Winnfield, LA

National Forests in Mississippi, Mississippi

Forest Supervisor Decisions

Clarion-Ledger, published daily in Jackson, MS

District Ranger Decisions

Bienville Ranger District: Clarion-Ledger, published daily in Jackson, MS

Biloxi Ranger District: Clarion-Ledger, published daily in Jackson, MS

Black Creek Ranger District: Clarion-Ledger, published daily in Jackson, MS

Bude Ranger District: Clarion-Ledger, published daily in Jackson, MS

Chickasawhay Ranger District: Clarion-Ledger, published daily in Jackson, MS

Delta Ranger District: Clarion-Ledger, published daily in Jackson, MS

Holly Springs Ranger District: Clarion-Ledger, published daily in Jackson, MS

Homochitto Ranger District: Clarion-Ledger, published daily in Jackson, MS

Strong River Ranger District: Clarion-Ledger, published daily in Jackson, MS

Tombigbee Ranger District: Clarion-Ledger, published daily in Jackson, MS

Ashe-Erambert Project: Clarion-Ledger, published daily in Jackson, MS

National Forests in North Carolina, North Carolina

Forest Supervisor Decisions

The Asheville Citizen-Times, published daily in Asheville, NC

District Ranger Decisions

Cheoah Ranger District: Graham Star, published weekly (Thursday) in Robbinsville, NC

Croatan Ranger District: The Sun Journal, published weekly

Croatan Ranger District: The Sun Journal, published weekly (Sunday through Friday) in New Bern, NC

French Broad District: The Asheville Citizen-Times, published daily in Asheville, NC

Grandfather District: McDowell News, published daily in Marion, NC

Highlands Ranger District: The Highlander, published weekly (May-Oct Tues & Fri; Oct-April Tues only) in Highlands, NC

Pisgah Ranger District: The Asheville Citizen-Times, published daily in Asheville, NC

Toecane Ranger District: The Asheville Citizen-Times, published daily in Asheville, NC

Tusquitee Ranger District: Cherokee Scout, published weekly (Wednesday) in Murphy, NC

Uwharrie Ranger District: Montgomery Herald, published weekly (Wednesday) in Troy, NC

Wayah Ranger District: The Franklin Press, published tri-weekly (Monday, Wednesday, and Friday) in Franklin, NC

Ouachita National Forest, Arkansas, Oklahoma

Forest Supervisor Decisions

Arkansas Democrat-Gazette, published daily in Little Rock, AR

District Ranger Decisions

Caddo Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR

Cold Springs Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR

Fourche Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR

Jessieville Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR

Mena Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR

Oden Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR

Poteau Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR

Winona Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR

Womble Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR

Choctaw Ranger District: Tulsa World, published daily in Tulsa, OK

Kiamichi Ranger District: Tulsa World, published daily in Tulsa, OK

Tiak Ranger District: Tulsa World, published daily in Tulsa, OK

Ozark-St. Francis National Forest: Arkansas

Forest Supervisor Decisions

The Courier, published daily (Sunday through Friday) in Russellville, AR

District Ranger Decisions

Sylamore Ranger District: Stone County Leader, published weekly (Tuesday) in Mountain View, AR

Buffalo Ranger District: Newton County Times, published weekly (Wednesday) in Jasper, AR

Bayou Ranger District: The Courier, published daily (Sunday through Friday) in Russellville, AR

Pleasant Hill Ranger District: Johnson County Graphic, published weekly (Wednesday) in Clarksville, AR
Boston Mountain Ranger District: Southwest Times Record, published daily in Fort Smith, AR
Magazine Ranger District: Southwest Times Record, published daily in Fort Smith, AR
St. Francis Ranger District: The Daily World, published daily (Sunday through Friday) in Helena, AR

National Forests in Texas, Texas

Forest Supervisor Decisions

The Lufkin Daily News, published daily in Lufkin, TX

District Rangers Decisions

Angelina Ranger District: The Lufkin Daily News, published daily in Lufkin, TX
San Jacinto Ranger District: The Houston Post, published daily in Houston, TX
Neches Ranger District: The Lufkin Daily News, published daily in Lufkin, TX
Raven Ranger District: The Courier, published daily in Conroe, TX
Tenaha Ranger District: The Lufkin Daily News, published daily in Lufkin, TX
Trinity Ranger District: The Lufkin Daily news, published daily in Lufkin, TX
Yellowpine Ranger District: The Beaumont Enterprise, published daily in Beaumont, TX
Caddo-LBJ Ranger District—Caddo-LBJ National Grassland: Denton Record-Chronicle, published daily in Denton, TX

The Responsible Official under 36 CFR part 215 gave annual notice in the **Federal Register** published in May 23, 1994, of principal newspapers to be utilized for publishing notices of proposed actions and of decisions subject to appeal under 36 CFR 215. The list of newspapers to be used for 215 notice and decision is corrected as follows:

Correction of Newspapers of:

Chattahoochee-Oconee National Forests, Georgia

District Ranger Decisions

Brasstown Ranger District: North Georgia News, published weekly (Wednesday) in Blairsville, GA.
Towns County Herald, published weekly (Thursday) in Hiwassee, GA
Chattooga Ranger District: Northeast Georgian, published weekly (Tuesday) in Cornelia, GA.

Francis Marion & Sumter National Forest, South Carolina

District Ranger Decisions

Long Cane Ranger District: The State, published daily in Columbia, SC.

George Washington National Forest, Virginia

Forest Supervisor Decisions

Daily News Record, published daily (except Sunday) in Harrisonburg, VA.

District Rangers Decisions

Dry River Ranger District: Daily News Record, published daily (except Sunday) in Harrisonburg, VA.

Deletion of Newspaper of:

Francis Marion & Sumter National Forest, South Carolina

District Ranger Decisions

Edgefield Ranger District: Augusta Herald, published daily in Augusta, GA.

Dated: November 2, 1994.

Michael L. Sparks,

Acting Deputy Regional Forester for Resources.

[FR Doc. 94–27718 Filed 11–8–94; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Nevada Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Nevada Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 4:00 p.m. on December 2, 1994, at the Hotel San Remo, 115 East Tropicana Avenue, Las Vegas, Nevada 89109. The purpose of the meeting is to sponsor a seminar on fair housing issues.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Margo Piscevich or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 2, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–27692; Filed 11–8–94; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Patent and Trademark Office (PTO).

Title: Deposit of Biological Materials for Patent Purposes.

Agency Approval Number: 0651–0022.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 3,325 hours.

Number of Respondents: 3,325.

Avg Hours Per Response: 1 hour.

Needs and Uses: Information on depositing of biological materials in depositories is required for (1) PTO determination of compliance with patent statute where invention sought to be patented relies on biological material subject to deposit requirement, which includes notification to interested public where to obtain samples of deposits, and (2) depositories desiring to be recognized as suitable by PTO.

Affected Public: Individuals or households, state or local governments, farms, businesses or other for–profit institutions, Federal agencies or employees, non–profit institutions, and small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Maya A. Bernstein, (202) 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: November 3, 1994.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–27717 Filed 11–8–94; 8:45 am]

BILLING CODE 3510-CW-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in Sri Lanka

November 3, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 10, 1994.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, special shift and carryover. The limits for Categories 334/634, 336/636/836 and 342/642/842 are being increased an additional 5 percent for garments made from locally-woven, handloomed fabrics.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 14152, published on March 25, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 3, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 22, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Sri Lanka and exported during the period which began on January 1, 1994 and extends through June 30, 1995.

Effective on November 10, 1994, you are directed to amend the directive dated March 22, 1994 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Democratic Socialist Republic of Sri Lanka:

Category	Adjusted eighteen-month limit [1]
237	393,936 dozen.
331/631	3,756,446 dozen pairs.
333/633	40,765 dozen.
334/634	876,806 dozen.
335/835	368,572 dozen.
336/636/836	634,244 dozen.
338/339	1,675,325 dozen.
340/640	1,622,643 dozen of which not more than 649,058 dozen shall be in Categories 340–Y/640–Y [2].
341/641	2,612,138 dozen of which not more than 1,741,425 dozen shall be in Category 341 and not more than 1,684,463 dozen shall be in Category 641.
342/642/842	944,444 dozen.
345/845	234,047 dozen.
347/348/847	2,138,777 dozen.
350/650	156,363 dozen.
351/651	456,347 dozen.
352/652	1,676,882 dozen.
359–C/659–C [3]	913,534 kilograms.
363	8,644,419 numbers.
369–D [4]	772,778 kilograms.
369–S [5]	993,288 kilograms.
435	23,704 dozen.
635	491,430 dozen.
638/639/838	1,238,429 dozen.
644	695,181 numbers.
645/646	149,554 dozen.
647/648	1,359,274 dozen.
840	424,255 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

[2] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[3] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[4] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[5] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–27719; Filed 11–8–94; 8:45 am]

BILLING CODE 3510-DR-F

Establishment and Adjustment of Import Restraint Limits and Transshipment Charges for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

November 3, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing and adjusting limits and charging imports.

EFFECTIVE DATE: November 9, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6704. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated September 23, 1994, the Governments of the United States and Indonesia agreed to amend and extend their current Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of May 8, 1992. The agreement is extended through December 31, 1995—July 1, 1994 through December 31, 1994 and January 1, 1995 through December 31, 1995. The agreement has been converted to a calendar year agreement. Also, agreement was reached to charge 5,083 dozen to Category 341 for the period July 1, 1994 through December 31, 1994 for goods improperly entered into the United States.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the July 1, 1994 through December 31, 1994 period. The Group II Subgroup includes an increase for carryover. The limit for Category 433, within the subgroup, includes increases for carryforward and special carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 3, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive cancels and supersedes the directive issued to you on June 27, 1994 by the Chairman, Committee for the Implementation of Textile Agreements. That directive directed you to count imports of certain textile products, produced or manufactured in Indonesia and exported during the period July 1, 1994 through June 30, 1995. Import charges already made to these categories shall be retained and applied to the limits established in this directive.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on December 9, 1993; pursuant to the Memorandum of Understanding dated September 23, 1994 between the Governments of the United States and Indonesia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on November 9, 1994, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Indonesia and exported during the six-month period beginning on July 1, 1994 and extending through December 31, 1994, in excess of the following levels of restraint:

Category	Six-month restraint limit
Levels in Group I	
200	325,000 kilograms.
219	3,610,234 square meters.
225	2,528,100 square meters.
300/301	1,544,950 kilograms.
313	6,550,732 square meters.
314	22,873,516 square meters.
315	10,393,300 square meters.
317/617/326	10,038,429 square meters of which not more than 1,483,287 square meters shall be in Category 326.
331/631	921,837 dozen pairs.
334/335	84,474 dozen.
336/636	235,956 dozen.
338/339	456,182 dozen.
340/640	561,800 dozen.
341	337,896 dozen.
342/642	140,450 dozen.
345	163,370 dozen.
347/348	617,980 dozen.
350/650	64,888 dozen.
351/651	182,585 dozen.
359–C/659–C[1]	533,710 kilograms.
359–S/659–S[2]	561,800 kilograms.
360	500,000 numbers.
361	500,000 numbers.
369–S[3]	344,857 kilograms.
443	40,804 numbers.
445/446	27,342 dozen.
600	375,000 kilograms.
604–A[4]	268,220 kilograms.
611	2,382,199 square meters.
613/614/615	9,522,510 square meters.
618	2,247,200 square meters.
619/620	3,483,160 square meters.
625/626/627/628/629.	10,658,304 square meters.
634/635	112,360 dozen.
638/639	584,272 dozen.
641	856,578 dozen.
643	125,000 numbers.
644	175,000 numbers.
645/646	295,659 dozen.
647/648	1,224,873 dozen.
669–P[5]	500,000 kilograms.
670–L[6]	500,000 kilograms.
847	154,760 dozen.
Group II	
201, 218, 220, 222-224, 226, 227, 229, 237, 239, 330, 332, 333, 349, 352–354, 359–O[7], 362, 363, 369–O[8], 400, 410, 414, 431, 432, 433, 434, 435, 436, 438, 439, 440, 442, 444, 447, 448, 459, 464, 465, 469, 603, 604–O[9], 606, 607, 621, 622, 624, 630, 632, 633, 649, 652–654, 659–O[10], 665, 666, 669–O[11], 670–O[12], 831–836, 838, 839, 840, 842–846, 850–852, 858 and 859, as a group.	33,500,000 square meters equivalent.
Subgroup in Group II	
400, 410, 414, 431, 432, 433, 434, 435, 436, 438, 439, 440, 442, 444, 447, 448, 459, 464, 465 and 469, as a group.	1,358,773 square meters equivalent.
In Group II subgroup	
433	6,655 dozen.
447	8,161 dozen.

[1] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[2] Category 359–S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.2010, 6211.11.2020, 6211.12.3003 and 6211.12.3005; Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 604–A: only HTS number 5509.32.0000.

[5] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[6] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.

[7] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025; 6211.42.0010 (Category 359–C); 6112.39.0010, 6112.49.0010, 6211.11.2010, 6211.11.2020, 6211.12.3003 and 6211.12.3005 (Category 359–S).

[8] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S).

[9] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A)

[10] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[11] Category 669–O: all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000 (Category 669–P).

[12] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025 (Category 670–L).

Imports charged to these category limits for the period July 1, 1993 through June 30, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of May 8, 1992 and the MOU dated September 23, 1994 between the Governments of the United States and Indonesia.

You are directed to charge 5,083 dozen to the July 1, 1994 through December 31, 1994 period for Category 341.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–27720; Filed 11–8–94; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 95–C0003]

Concord Enterprises, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional Acceptance of a Settlement Agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20 (e)–(h). Published below is a provisionally-accepted Settlement Agreement with Concord Enterprises, Inc., a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by November 25, 1994.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 95–C0003, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT:

Earl A. Gershenow, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: November 3, 1994.

Sadye E. Dunn,

Secretary.

Settlement Agreement

1. Concord Enterprises, Inc. (hereinafter "Concord"), a corporation, enters into this Settlement Agreement and Order (hereinafter "Settlement Agreement") with the staff of the Consumer Product Safety Commission, and agrees to the entry of the Order described herein. The purpose of the Settlement Agreement is to settle the staff's allegations that Concord knowingly caused the introduction into interstate commerce of certain banned hazardous toys, in violation of section 4(a) of the Federal Hazardous Substances Act, 15 U.S.C. 1263(a).

I. Jurisdiction

2. The Commission has jurisdiction over Concord and the subject matter of this Settlement Agreement pursuant to section 30(a) of the Consumer Product Safety Act (hereinafter "CPSA"), 15 U.S.C. 2079(a), and sections 2(f)(1)(D), 4(a), and 5(c) of the Federal Hazardous Substances Act (hereinafter "FHSA"), 15 U.S.C. 1261(f)(1)(D), 1263(a), and 1264(c).

II. The Parties

3. The "staff" is the staff of the Consumer Product Safety Commission, an independent regulatory commission of the United States established pursuant to section 4 of the CPSA, 15 U.S.C. 2053.

4. Concord is a corporation organized and existing under the laws of the State of California, with its principal corporate offices located at 2957 E. 46th Street, Los Angeles, California 90058. Concord is a wholesaler of general and non-durable merchandise, including toys.

III. Allegations of the Staff

A. Toys

5. On five occasions between June 27, 1991, and December 17, 1991, Concord caused the introduction into interstate commerce of 7 kinds of toys (107,040 units) intended for use by children under three years of age, which are identified and described below:

Sample No.	Product	Entry date	Expt/Mfg
P–860–7237	Baby Angela	6/27/91	L&A Company.
M–867–2954	3-Piece Doll	7/20/91	L&A Company.
P–867–7694	Plastic Doll	10/31/91	L&A Company.
P–867–7695	Plastic Wind Up Family Car	10/31/91	L&A Company.
P–867–7716	Soft Vinyl Animal In Plastic Box	11/11/91	Manley Toys.

Sample No.	Product	Entry date	Expt/Mfg
P–860–7238	Baby & Bear	12/17/91	Sunlight Industries.
P–860–7236	Two Dolls in Plastic Vinyl	12/17/91	Rewinner Enterprises.

6. The toys identified in paragraph 5 above are subject to, but failed to comply with, the Commission's Small Parts Regulation, 16 CFR part 1501, in that, when tested under the "use and abuse" test methods specified in 16 CFR 1500.51 and 1500.52, (a) one or more parts of each tested toy separated; and (b) one or more of the separated parts from each of the tested toys fit completely within the test cylinder, as set forth in 16 CFR 1501.4.

7. Because separated parts fit completely within the test cylinder as described in paragraph 6 above, each of the toys identified in paragraph 5 presents a "mechanical hazard" within the meaning of section 2(s) of the FHSA, 15 U.S.C. 1261(s) (choking, aspiration and/or ingestion of small parts).

8. Each of the toys identified in paragraph 5 above is a "hazardous substance" pursuant to section 2(f)(1)(D) of the FHSA, 15 U.S.C. 1261(f)(1)(D).

9. Each of the toys identified in paragraph 5 above is a "banned hazardous substance" pursuant to (a) section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261(g)(1)(A) (any toy or other article intended for use by children which bears or contains a hazardous substance); and (b) 16 CFR 1500.18(a)(9).

B. Baby Rattles

10. On November 21, 1990, Concord caused the introduction into interstate commerce of 4,320 units of a baby rattle, "Set of Two Assorted Baby Rattles" ("Rattle"), purchased from Manley Toys (Sample No. M–867–2411).

11. When tested under the methods and procedures prescribed in 16 CFR 1500.51, the Rattle entered and penetrated the full depth of the cavity of the test fixture specified in 16 CFR 1510.4.

12. Pursuant to 16 CFR 1500.18(a)(15), the Rattle presents a "mechanical hazard" (i.e., choking, aspiration, and/or ingestion of small parts) within the meaning of section 2(s) of the FHSA, 15 U.S.C. 1261(s) because it failed to comply with 16 CFR 1510.4.

13. The Rattle is a "hazardous substance" pursuant to section 2(f)(1)(D) of the FHSA, 15 U.S.C. 1261(f)(1)(D), because it is a toy or other article intended for use by children which presents a "mechanical hazard" under 16 CFR 1500.18(a)(15).

14. The Rattle is a "banned hazardous substance" pursuant to section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261(q)(1)(A), because it is a toy or other article intended for use by children which bears or contains a hazardous substance.

15. The introduction into interstate commerce of the aforesaid banned hazardous Rattle is a violation of section 4(a) of the FHSA, 15 U.S.C. 1263(a), for which a civil penalty may be imposed pursuant to section 5(c) of the FHSA, 15 U.S.C. 1264(c).

IV. Response of Concord

16. Concord denies the allegations of the staff set forth in paragraphs 5 through 15 above that it has knowingly caused the introduction into commerce of the aforesaid banned hazardous toys or rattles, or that it has violated the FHSA as alleged by the staff.

V. Agreement of the Parties

17. The Consumer Product Safety Commission has jurisdiction over Concord and the subject matter of this Settlement Agreement under the following acts: Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*, and the Federal Hazardous Substances Act, 15 U.S.C. 1261 *et seq.*

18. Upon final acceptance by the Commission of this Settlement Agreement and issuance of the Final Order, Concord agrees to pay to the Commission a civil penalty in the amount of SIXTY THOUSAND AND 00/100 DOLLARS ($60,000.00), in three (3) payments of TWENTY THOUSAND AND 00/100 ($20,000.00) each. The first payment shall be due within twenty (20) days after service of the Final Order of the Commission accepting the Agreement, hereinafter, the "anniversary date." The second payment shall be made within one year of the anniversary date, and the third payment shall be made within two years of the anniversary date. Payment of the full amount of the civil penalty shall settle fully the staff's allegations set forth in paragraphs 5 through 15 above that Concord violated the FHSA. Upon the failure by Concord to make a payment or upon the making of a late payment by Concord (a) the entire amount of the civil penalty shall be due and payable, and (b) interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. 1961(a) and (b).

19. The Commission does not make any determination that Concord knowingly violated the FHSA. The Commission and Concord agree that this Agreement is entered into for the purposes of settlement only.

20. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, Concord knowingly, voluntarily and completely, waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Concord failed to comply with the FHSA as aforesaid, and (4) to a settlement of findings of fact and conclusions of law.

21. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had issued; and, the Commission may publicize the terms of the Settlement Agreement and the Order.

22. Upon provisional acceptance of this Settlement Agreement by the Commission, this Settlement Agreement and the Provisional Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e)–(h). If the Commission does not receive any written request not to accept the Settlement Agreement within 15 days, the Settlement Agreement shall be deemed finally accepted and the Final Order shall be deemed issued on the 16th day after the date the Settlement Agreement is published in the **Federal Register.**

23. The parties further agree that the Commission shall issue the attached Order incorporated herein by reference; and that a violation of the Order shall subject Concord to appropriate legal action.

24. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement may be used to vary or to contradict its terms.

25. The provisions of the Settlement Agreement and Final Order shall apply to Concord and each of its successors and assigns.

Dated: May 10, 1994.

Respondent Concord Enterprises, Inc.

Hamid Shayan,

President, Concord Enterprises, Inc., 2957 E 46th Street, Los Angeles, CA 90058.

Commission Staff.

David Schmeltzer,

Assistant Executive Director, Office of Compliance and Enforcement.

Eric L. Stone,

Acting Director, Division of Administrative Litigation, Office of Compliance and Enforcement.

Dated: May 13, 1994 by:

Earl A. Gershenow,

Trial Attorney, Division of Administrative Litigation, Office of Compliance and Enforcement.

Dated: May 31, 1994 by:

Dennis C. Kacoyanis,

Trial Attorney, Division of Administrative Litigation, Office of Compliance and Enforcement.

Order

Upon consideration of the Settlement Agreement entered into between respondent Concord Enterprises, Inc., a corporation, and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Concord Enterprises, Inc; and it appearing that the Settlement Agreement and Order is in the public interest, it is

Ordered, that the Settlement Agreement and Order be and hereby is accepted, as indicated below; and it is

Further Ordered, that upon final acceptance of the Settlement Agreement and Order, Concord Enterprises, Inc. shall pay to the Commission a civil penalty in the amount of SIXTY THOUSAND-FIVE AND 00/100 DOLLARS ($60,000.00) in three (3) payments of TWENTY THOUSAND AND 00/100 DOLLARS ($20,000.00) each. The first payment shall be due within twenty (20) days after service of the Final Order of the Commission accepting the Settlement Agreement, hereinafter, the "anniversary date." The second payment shall be made within one year of the anniversary date, and the third payment shall be made within two years of the anniversary date. Payment of the full amount of the civil penalty shall settle fully the staff's allegations set forth in paragraphs 5 through 15 of the Settlement Agreement and Order that Concord Enterprises, Inc. violated the FHSA. Upon the failure by Concord to make a payment or upon the making of a late payment by Concord (a) the entire amount of the civil penalty shall be due and payable, and (b) interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. 1961 (a) and (b).

Provisionally accepted and Provisional Order issued on the 3rd day of November, 1994.

By Order of the Commission

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 94–27681 Filed 11–8–94; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP94–164–005]

Trunkline Gas Co.; Compliance Filing

November 3, 1994.

Take notice that on October 31, 1994, Trunkline Gas Company (Trunkline) tendered for filing a filing in compliance with the Commission's Letter Order dated October 14, 1994 in Docket No. RP94–164–004.

Trunkline states that this filing contains the required reconciliation and workpapers in accordance with the directives of the above-mentioned order.

Trunkline requests that the Commission grant such waivers as may be necessary for the acceptance of this filing as being in compliance with the Commission's Letter Order dated October 14, 1994 in Docket No. RP94–164–004.

Trunkline further states that copies of the filing are being served on all parties to this proceeding and applicable state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before November 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–27708 Filed 11–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–34–000]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

November 3, 1994.

Take notice that on November 1, 1994, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1 listed in Appendix A thereto. The proposed effective date of such tariff sheets is December 1, 1994.

TGPL states that the instant filing is for the limited purpose of revising TGPL's Rate Schedule FT reservation rates and Rates Schedule ESS (Eminence Storage Service) demand and capacity charges in order to provide for the recovery of certain costs attributable to expansion of TGPL's Eminence Storage Field. The revision to the Rate Schedule FT reservation charges will necessarily result in revisions to charges under Rate Schedules FT–R, FTN, FTN–R, and FT–G; similarly, the revisions to the Rate Schedule ESS–R charges. Moreover, the reservation rate surcharge applicable to Incremental Leidy Line Annual Firm Transportation service and the Niagara Import Project—System Expansion which have been assigned and converted from Section 7(c) to service under part 284 have been reduced in order to offset the increase in the Rate Schedule FT reservation rate such that the total reservation rate for such service remains unchanged.

TGPL states that copies of the instant filing are being mailed to customers, State Commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–27707 Filed 11–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–2–20–000]

Algonquin Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

November 3, 1994.

Take notice that on November 1, 1994, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheet, effective November 16, 1994:

Fourth Revised Sheet No. 40

Algonquin states that the purpose of this filing is to reflect changes in its requirement to retain gas in-kind in compensation for the quantities of company use gas used to provide service to Algonquin's customers.

Algonquin further states that copies of this filing were mailed to all affected customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with 18 CFR Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–27706 Filed 11–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–32–000]

NorAm Gas Transmission Co.; Notice of Filing

November 3, 1994.

Take notice that on November 1, 1994, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff the following tariff sheets, to become effective December 1, 1994:

Third Revised Volume No. 1
Second Revised Sheet No. 131
Fourth Revised Volume No. 1
1st Rev Original Sheet No. 233
Original Sheet No. 233A

NGT states that these revised tariff sheets modify the provisions of NGT's compressor fuel assessment and retention percentage, to provide that for transactions that provide an operational benefit to NGT or that do not entail the use of NGT's compressors or consumption of fuel in other gas handling equipment on NGT's system, NGT may determine that the compressor fuel assessment or retention percentage should include only company used gas and gas lost or otherwise accounted for.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before November 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–27705 Filed 11–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–33–000]

Williston Basin Interstate Pipeline Co.; Notice of Tariff Revisions

November 3, 1994.

Take notice that on November 1, 1994, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing revised tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff.

Williston Basin states that the revised tariff sheets are designed to implement procedures to allow each Shipper the opportunity to trade and/or transfer telemetered imbalances below a specified tolerance level (four percent) and non-telemetered imbalances between Service Agreements and/or Shippers on Williston Basin's system to the extent such imbalances originated under the same Rate Schedule, prior to the imbalance cash-out procedures as more fully detailed in Williston Basin's FERC Gas Tariff.

Williston Basin respectfully requests that the tariff sheets be made effective December 1, 1994.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20246, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–27712 Filed 11–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–45–000]

Williston Basin Interstate Pipeline Co.; Notice of Application

November 3, 1994.

Take notice that on November 1, 1994, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 300, 200 North Third Street, Bismarck, North Dakota 58501, filed in Docket No. CP95–45–000 an application pursuant to Section 7(c) of the Natural Gas Act for authorization to amend the authorization in Docket No. CP91–1897–000[1] by deleting a receipt point and reassigning the natural gas volumes delivered to the receipt point for Northern States Power Company, (NSP), all as more fully set forth in the application on file with the Commission and open to public inspection.

Williston Basin proposes to delete the West Short Pine Hills-Mainline receipt point in Harding County, South Dakota from its FERC Rate Schedule X–13 for service to NSP and to reassign those quantities to the Lignite Plant receipt point in Burke County, North Dakota, to its FERC Rate Schedule X–13 for NSP. The affected quantities of 250 dekatherms for each of the two periods from April–October and from November–March at the West Short Pine Hills point would be reassigned to the Lignite point during the same months.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 14, 1994, file with the

[1] 58 FERC ¶61,344 (1992).

Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Williston Basin to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–27711 Filed 11–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP85–177–124]

Texas Eastern Transmission Corp.; Notice of Refund Report

November 3, 1994.

Take notice that on October 27, 1994, Texas Eastern Transmission Corporation (Texas Eastern) pursuant to Article VI of the final and non-appealable Stipulation and Agreement filed January 31, 1994 in Docket No. RP85–177–119, *et al.*, and approved by FERC Orders dated May 12, 1994 [1] and July 13, 1994,[2] filed its report of refunds.

Texas Eastern states that the refund report documents the information necessary to support Texas Eastern's refund of approximately $84 million (inclusive of principal and interest as of December 1, 1994) representing amounts received from its customers of Gas Supply Realignment, Contract Assignment Program, and Account No. 191 costs provided for in Article III of the Settlement. Texas Eastern states that it is also refunding all payments received (inclusive of both principal and interest) under Rate Schedules CD–1, CD–2, DCQ, GS, ACQ, SGS, and SCQ of Contrast Assignment Program costs as a result of Docket No. RP93–122 and Docket No. RP94–16.

Texas Eastern also states that Philadelphia Gas Works' (PGW) continued pursuant to its position in certain proceedings amounts to a breach of the settlement, and therefore, Texas Eastern is placing refunds due PGW into an escrow account, until PGW comes into compliance.

Texas Eastern states that a copy of the refund report summary together with a list of terminated dockets has been sent to each of Texas Eastern's affected customers as well as the detailed calculations for such customers refund.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before November 25, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–27709 Filed 11–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1530–000]

Acme Power Marketing, Inc.; Issuance of Order

October 28, 1994.

On July 15, 1994 and August 15, 1994, Acme Power Marketing, Inc. (ACME) submitted for filing a rate scheduled under which ACME will engage in wholesale electric power and energy transactions as a marketer. ACME also requested waiver of various Commission regulations. In particular, ACME requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by ACME.

On October 18, 1994, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by ACME should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, ACME is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interests, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of ACME's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 17, 1994.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27715 Filed 11–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT95–2–000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

November 3, 1994.

Take notice that on November 1, 1994, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets:

Second Revised Sheet No. 17
Second Revised Sheet No. 30
First Revised Sheet No. 51
First Revised Sheet No. 55
First Revised Sheet No. 88

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[1] Texas Eastern Corp., 67 FERC ¶ 67,170 (1994).

[2] Texas Eastern Transmission Corp., 68 FERC ¶ 61,062 (1994).

First Revised Sheet No. 89
First Revised Sheet No. 90
Second Revised Sheet No. 118
First Revised Sheet No. 119

The proposed effective date of the above tariff sheets is November 1, 1994.

Iroquois states that the purpose of its filing is to conform Iroquois' FERC Gas Tariff to recent regulatory changes promulgated by the Commission in Order Nos. 566 and 566–A, including specifically: (1) The removal of certain tariff provisions no longer required by Section 250.16(b) of the Commission's regulations; (2) removal of tariff languages requiring the posting of non-affiliate discounts on Iroquois' electronic bulletin board (EBB); (3) elimination of certain information items no longer required to be included in requests for service; and (4) revision of information required to be posted on Iroquois' EBB concerning discounts to marketing affiliates and contract data relevant to the allocation of capacity to marketing affiliates. In addition, Iroquois is updating its list of marketing affiliates to reflect the Commission's determinations in previous orders that the marketing affiliates of certain of Iroquois' partners do not qualify as marketing affiliates of Iroquois pursuant to Section 161.2 of the Commission's regulations, and to reflect certain other corporate changes.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–27713 Filed 11–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–3–29–000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

November 3, 1994.

Take notice that on October 31, 1994, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, filing certain revised tariff sheets, which tariff sheets are enumerated in Appendix A attached to the filing.

TGPL states that the purpose of the instant filing is to track rate changes attributable to:

(1) Transportation services purchased from National Fuel Gas Supply Corporation (National Fuel) under its Rate Schedule X–42 the costs of which are included in the rates and charges payable under TGPL's Rate Schedule LSS,

(2) Transportation services purchased from National Fuel under its Rate Schedule X–54 the costs of which are included in the rates and charges payable under TGPL's Rate Schedule SS–2,

(3) Storage services purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X–28 the costs of which are included in the rates and charges payable under TGPL's Rate Schedule S–2,

(4) Transportation services purchased from National Fuel under its Rate Schedule X–58 the costs of which are included in the rates and charges payable under TGPL's Niagara Import Point Project—System Expansion (NIPP–SE),

(5) Transportation services purchased from Texas Gas Transmission Corporation (Texas Gas) under its Rate Schedule FT the costs of which are included in the rates and charges payable under TGPL's Rate Schedule FT–NT, and

(6) Transportation services purchased from CNG Transmission Corporation (CNG) under its Rate Schedule X–74 the costs of which are included in the rates and charges payable under TGPL's Rate Schedule FT–NT. This tracking filing is being made pursuant to Section 4 of TGPL's Rate Schedule LSS, Section 4 of TGPL's Rate Schedule SS–2, Section 26 of the General Terms and Conditions, Section 8.01(i) of TGPL's NIPP–SE Rate Schedules X–314, X–315, X–316, X–318 and X–324 and Section 4 of TGPL's Rate Schedule FT–NT.

TGPL states that Appendices B through F attached to the filing contain explanations of the rate changes and details regarding the computation of the revised LSS, SS–2, S–2, NIPP–SE and FT–NT rates, respectively.

TGPL states that copies of the filing are being mailed to each of its LSS, SS–2, S–2, NIPP–SE and FT–NT customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–27714 Filed 11–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 1494–038, –051, –059; Oklahoma]

Grand River Dam Authority; Notice of Availability of Environmental Assessment

November 3, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47910), the Office of Hydropower Licensing (OHL) reviewed three applications for non-project use of project lands for the Pensacola Hydroelectric Project. Application number 1 proposes excavating 4,000 cubic yards of material from the bottom of Grand Lake O' The Cherokees, in Delaware County, Oklahoma, for the purpose of raising a private property to the 757-foot elevation. Application number 2 proposes excavating a 750-foot-long, 150-foot-wide area to 735 feet mean sea level, for the purpose of providing boat access from a protected cove in Elk River area of Grand Lake O' The Cherokees, in Delaware County, Oklahoma. Application number 3 proposes to excavate 989.87 feet of shoreline, containing approximately 12,000 cubic yards of material, for the purpose of providing boat access to the Ketchum Cove area of Grand Lake O' The Cherokees, in Delaware County, Oklahoma. The staff prepared an Environmental Assessment (EA) for the

three proposals. In the EA, staff concludes that approval of these non-project uses of project lands would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, Room 3308, of the Commission's offices at 941 North Capitol Street, N.E., Washington, D.C. 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–27710 Filed 11–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2216–028, et al.]

Hydroelectric Applications [Power Authority of the State of New York, et al.]; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. Type of Application: Amendment of License.

b. Project No.: 2216–028.

c. Dated Filed: May 26, 1994.

d. Applicant: Power Authority of the State of New York.

e. Name of Project: Niagara Power Project.

f. Location: The project is located on the Niagara river in the Towns of Lewiston and Niagara, Niagara County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Applicant Contact: Power Authority of the State of New York, Charles M. Pratt, General Counsel, 1633 Broadway, New York, NY 10019, (212) 468–6751.

i. FERC Contact: David T. Tran, Civil Engineer, (202) 219–2674.

j. Comment Date: December 15, 1994.

k. Description of Proposed Action: The Power Authority of the State of New York, licensee for the Niagara Power Project, proposes to remove the Lewiston Pump-Generating Plant (LPGP) expansion from the project license. The LPGP expansion consists of a new intake/outlet structure at the Lewiston Reservoir, two new 22-foot-diameter steel and concrete power tunnels, a new powerhouse containing two 30 MW pump-turbine units, a new tailrace channel, and a new 1,500-foot long, 230-kW transmission line.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

2 a. Type of Application: Amendment to Project Design.

b. Project No: 10228–007

c. Date Filed: October 14, 1994.

d. Applicant: Cannelton Hydroelectric Project, L.P.

e. Name of Project: Cannelton.

f. Location: On the existing United States Army Corps of Engineers' Cannelton Locks and Dam on the Ohio River in Hancock County, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Applicant Contact: James B. Price, President, Cannelton Hydro Project, L.P., 120 Calumet Court, Aiken, SC 29803, (803) 642–2749.

i. FERC Contact: Mohamad Fayyad, (202) 219–2665.

j. Comment Date: December 15, 1994.

k. Description of Amendment: Licensee proposes the following design changes: (1) Installing 240 bulb-type generating units rated at 330 kW each, instead of the licensed three 26,670-kW large units, and (2) extending the project's transmission line about 8.3 miles. The change in project design eliminates the need for a powerhouse, where the smaller units would be fitted in modules in the gate bays of the existing dam; each module will contain 30 units in two horizontal rows of 15 units. The proposed transmission line alignment will be along an existing utility line to the point of interconnection with LG&E's Cloverport substation. This proposed alignment would require the clearing of about 52 acres of woods.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

3 a. Type of Application: Amendment of License.

b. Project No.: 10934–003.

c. Dated Filed: August 23, 1994.

d. Applicant: William B. Ruger, Jr.

e. Name of Project: Sugar River II.

f. Location: Sugar River, Sullivan County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Applicant Contact: John R. Asp, 33 Roosevelt Drive, Suite 404, Derby, CT 06418, (203) 732–3525.

i. FERC Contact: David T. Tran (202) 219–2674.

j. Comment Date: December 12, 1994.

k. Description of Amendment: To shorten the bypass reach of river by 650 feet by relocating the proposed dam in a downstream direction and substituting an open canal with a seven-foot-diameter buried steel penstock.

l. This notice also consists of the following standard paragraphs: B, C1, and D2

4 a. Type of Application: Small Conduit Exemption.

b. Project No.: 11459–001 (Note: Duplicate notices of this application were issued on October 21, 1994 and October 31, 1994.)

c. Date filed: March 18, 1994.

d. Applicant: Washington County Water Conservancy District.

e. Name of Project: Quail Creek No. 2 Hydroelectric Facility.

f. Location: On the existing Quail Creek irrigation and water supply project on the Virgin River and Quail Creek in Washington County, Utah. Section 36, Township 41 South, Range 14 West, Salt Lake Base and Meridian.

g. Filed Pursuant to: Federal Power Act, 16 USC §§ 791(a)–825(r).

h. Applicant Contact: Mr. Morgan S. Jensen, Planning and Environmental Coordinator, Washington County, Water Conservancy District, 136 North 100 East, Suite 1, St. George, UT 84770, (801) 673–3617.

i. FERC Contact: James Hunter, (202) 219–2839.

j. Comment Date: December 23, 1994.

k. Description of Project: The proposed project would consist of: (1) a new pipeline connecting to the existing Quail Creek Reservoir supply pipeline; (2) a 40-foot-wide, 85-foot-long powerhouse containing two generating units rated at 1.8 MW and producing an average annual output of 3.08 GWH; (3) a tailrace discharging flows to Stratton Regulating pond; and (4) a new outlet from the regulating pond returning flows to the Virgin River at the same point as the existing Quail Creek Reservoir outlet.

l. Purpose of Project: Energy produced would be sold to Dixie/ Escalante Rural Electric Association and the City of Hurricane.

m. This notice also consists of the following standard paragraphs: A2, A9, B, and D4.

Standard Paragraphs

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application

may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's must also be sent to the Applicant's representatives.

D4. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice (December 30, 1994 for Project No. 11459–001). All reply comments must be filed with the Commission within 105 days from the date of this notice (February 13, 1995 for Project No. 11459–001).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: November 3, 1994, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27716 Filed 11–8–94; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5101–1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces the Office of Management and Budget's (OMB) responses to Agency PRA clearance requests.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer (202) 260–2740.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests

OMB Approvals

EPA ICR No. 1721.01. Subpoenas Served to U.S. Parent Companies with Facilities in the Vicinity of Mexicali; was approved 09/20/94; OMB No. 2070–0140; expires 03/30/95.

EPA ICR No. 1287.04; Operations and Maintenance (D&M), Biosolids Use (Biosolids), Storm Water Management (SW), and Combined Sewer Overflow (CSO) Management Awards Nominees under EPA's Wastewater Excellence Awards Program; was approved 10/07/94; OMB No. 2040–0101; expires 10/31/97.

EPA ICR No. 1711.01; Information Collection Request for Customer Satisfaction Surveys; was approved 10/13/94; OMB No. 2090–0019; expires 10/31/97.

EPA ICR No. 1676.01; Clean Air Act Tribal Authority; was approved 10/04/94; OMB No. 2060–0306; expires 10/31/97.

EPA ICR No. 1714.01; Mandatory Patent Licenses under Section 308 of the Clean Air Act (CAA); was approved 10/03/94; OMB No. 2060–0307; expires 10/31/97.

EPA ICR No. 0370.12; Underground Injection Control Program Facility and Well Inventory Information; was approved 09/30/94; OMB No. 2040–0042; expires 03/31/95.

EPA ICR No. 1718.01; Regulations of Fuels and Fuel Additives, Fuel Quality Regulations for Highway Diesel Fuel Sold in 1993 and Later Calendar Years (Interim Final Rule); was approved 10/03/94; OMB No. 2060–0308; expires 10/31/97.

OMB Disapproval

EPA ICR No. 0270.33; Disinfectants and Disinfection By-Products Rule; was disapproved 09/30/94.

Dated: November 3, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–27685 Filed 11–8–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL RESERVE SYSTEM

FCNB Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that request a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 2, 1994.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. FCNB Corp., Frederick, Maryland; to merge with ENB Financial Corporation, Elkridge, Maryland, and thereby indirectly acquire Elkridge National Bank, Elkridge, Maryland.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Prairie Financial Corporation, Bridgeview, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Prairie Bank and Trust Company, Bridgeview, Illinois.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Barretville Corporation, Barretville, Tennessee; to become a bank holding company by acquiring 39.4 percent of the voting shares of Sommerville Bank and Trust Company, Somerville, Tennessee.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Bancook Corporation, Cook, Nebreska; to acquire 98 percent of the voting shares of The First National Bank of Summerfield, Summerfield, Kansas.

Board of Governors of the Federal Reserve System, November 3, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–27726 Filed 11–8–94; 8:45 am]

BILLING CODE 6210–01–M

Banterra Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulatory Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulatory Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 23, 1994.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Banterra Corp., Eldorado, Illinois; to acquire, through its subsidiary, Eldorado, Illinois, and indirectly acquire Banterra Insurance Services, Inc., the assets of Ron Clark Insurance, Inc., and thereby engage in general insurance agency activities in Eldorado, Illinois, and five other Illinois towns with populations of less than 5,000, in which Banterra Corp., or a subsidiary thereof has a lending office, pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 3, 1994.

Jennifer, J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–27725 Filed 11–8–94; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL TRADE COMMISSION

Policy Statement With Request for Public Comment Regarding Duration of Competition Orders and Request for Public Comment Regarding Duration of Consumer Protection Orders

AGENCY: Federal Trade Commission.

ACTION: Extension of time for filing comments.

SUMMARY: The Federal Trade Commission ("Commission") has requested public comments on a policy statement regarding duration of competition orders, and also has requested public comments as to the duration of consumer protection orders. 59 FR 45286 (September 1, 1994).

DATES: Written comments will be accepted until December 5, 1994.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, Room H–159, 6th and Pennsylvania Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: As to competition orders, Daniel P. Ducore, Assistant Director for Compliance (202) 326–2526. As to consumer protection orders, Dean C. Graybill, Associate Director for Enforcement (202) 326–3284. As to all matters, Donald S. Clark, Secretary (202) 326–2514.

SUPPLEMENTARY INFORMATION: On September 1, 1994, the Commission published a request for comments on a policy statement made effective July 22, 1994, with regard to the duration of competition (antitrust) orders. Under the policy statement, the Commission will presume that core injunctive provisions in future competition orders should terminate automatically (or "sunset") after twenty years. The Commission will also presume that all supplemental provisions in future competition orders should sunset after no more than ten years. In addition, the statement articulates the Commission's policy determination to apply, in the context of petitions to reopen and modify existing administrative orders (16 CFR 2.51) a rebuttable presumption that the public interest warrants terminating orders that have been in force more than twenty years. Although these policies are already in effect, the Commission is soliciting comment from interested persons. The Commission is also soliciting comment on adopting policies affecting the duration of administrative and court orders entered in consumer protection matters.

The comment period was scheduled to close on November 4, 1994. However, the American Association of Retired Persons requested an extension of time to file comments. Staff has received oral communications from several other interested persons expressing concern about meeting the original deadline for filing comments. In its discretion, the Commission hereby extends the comment period until December 5, 1994.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–27687 Filed 11–8–94; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Privacy Act of 1974; Altered System of Records

AGENCY: Office of the Secretary, HHS.

ACTION: Notification of altered system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Office of the Secretary (OS) is publishing a notice of altered system of records. The purpose of the alteration is to add a new routine use to 51 Office of the Secretary Privacy Act systems of records.

DATES: OS invites interested parties to submit comments on the proposed routine use on or before December 9, 1994. OS has sent a Report of Altered System of Records to the Congress and to the Office of Management and Budget (OMB) on November 2, 1994. The new routine use will be effective 40 days after the date of publication unless OS receives comments that would result in a contrary determination.

ADDRESSES: Please submit comments to: HHS Privacy Act Officer, Room 645–F, Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Comments received will be available for inspection at this same address from 8:30 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: The HHS Privacy Act Officer at the address listed above. (Telephone: 202–690–7453; not a toll free number.)

SUPPLEMENTARY INFORMATION: OS is proposing to add a new routine use to 51 Office of the Secretary Privacy Act systems of records listed below. This routine use will permit the disclosure of information from these systems to certain individuals working in various OS offices but who do not have the status of agency employees and, in many instances, do not receive pay for their work. Examples of such categories of non-employee workers are:

Individuals working under a personal services contract.

Student volunteers engaged under 5 U.S.C. 3511.

Job Corps enrollees engaged under the Job Training Partnership Act.

Older American Community Service Employment Act enrollees.

Some OS offices that use these non-employee workers may wish to have them perform functions that require access to records in Privacy Act systems of records. Therefore we have decided to promulgate a new routine use rather than rely on subsection (b)(1) of the Privacy Act, which authorizes access to officers and employees of the agency who need the records in the performance of their duties.

The records will continue to be adequately protected, since the individuals to whom the information will be disclosed work under the supervision of agency employees. They must observe the same safeguards that agency employees do in the maintenance of Privacy Act records.

The proposed new routine use is compatible with the data collection, since the disclosures are being made for the very purpose for which the information was collected, i.e., to carry out the particular agency or program function for which the specific system of records was established.

Dated: November 2, 1994.

Avis LaVelle,

Assistant Secretary for Public Affairs.

Altered Systems

09–90–0001 Telephone Director/Locator System, HHS/OS/ASMB

09–90–0002 Investigatory Material Compiled for Security and Suitability Purposes, HHS/OS/OIG

09–90–0003 Criminal Investigative Files of the Inspector General HHS/OS/OIG

09–90–0005 Safety Management Information System, HHS/OS/ASMB

09–90–0006 Applicants for Employment Records, HHS/OS/ASPER

09–90–0007 Complaints and Inquiries Records, HHS/OS/ASPER

09–90–0008 Conflict of Interest Records, HHS/OS/ASPER

09–90–0009 Discrimination Complaint Records, HHS/OS/ASPER

09–90–0010 Employee Assistance Program Records, HHS/OS/ASPER

09–90–0011 Employee Appraisal Program Records, HHS/OS/ASPER

09–90–0012 Executive Development Records, HHS/OS/ASPER

09–90–0013 Federal Employees Occupational Health Program Records, HHS/OS/ASPER

09–90–0014 Grievances Filed Under Part 771 of 5 CFR, HHS/OS/ASPER

09–90–0015 Grievance Records Filed Under Procedures Established by Labor-Management Negotiations, HHS/OS/ASPER

09–90–0016 HHS Motor Vehicle Operator Records, HHS/OS/ASPER

09–90–0017 Pay, Leave, and Attendance Records, HHS/OS/ASPER

09–90–0018 Personnel Records in Operating Offices, HHS/OS/ASPER

09–90–0019 Special Employment Program Records, HHS/OS/ASPER

09–90–0020 Suitability for Employment Records, HHS/OS/ASPER

09–90–0021 Training Management Information System, HHS/OS/ASPER

09–90–0022 Volunteer EEO Support Personnel Records, HHS/OS/ASPER

09–90–0023 Departmental Parking Control Policy and Records Systems, HHS/OS/ASMB

09–90–0024 Financial Transactions of HHS Accounting and Finance Offices, HHS/OS/ASMB

09–90–0025 Central Registry of Individuals Doing Business with HHS, HHS/OS/ASMB

09–90–0027 Congressional Correspondence Unit, HHS/OS/ASL

09–90–0028 Biographics and Photographs of HHS Officials, HHS/OS/ASPA

09–90–0036 Employee Suggestion Program Records, HHS/OS/ASPER

09–90–0037 Secretariat's Correspondence Control System, HHS/OS/ES

09–90–0038 Secretary's Official Files, HHS/OS/ES

09–90–0041 Consumer Mailing List, HHS/OS/OCA
09–90–0046 Consumer Complaint Correspondence System, HHS/OS/OCA
09–90–0049 Departmental Appeals Board Case and Appeal Records, HHS/OS/DAB
09–90–0050 Case Information Management System, HHS/OS/OCR
09–90–0101 Health Care Program Violations, HHS/OS/OIG
09–90–0051 Complaint Files and Log, HHS/OS/OCR
09–90–0058 Freedom of Information Case File and Correspondence Control Log, HHS/OS/ASPA
09–90–0059 Federal Advisory Committee Membership Files, HHS/OS/ASPER
09–90–0062 Administrative Claims, HHS/OS/OGC
09–90–0064 Litigation Files, Administrative Complaints, and Adverse Personnel Actions, HHS/OS/OGC
09–90–0065 Conflict of Interest—Standards of Conduct Records, HHS/OS/OGC
09–90–0066 OGC Attorney Applicant Files, HHS/OS/OGC
09–90–0068 Federal Private Relief Legislation, HHS/OS/OGC
09–90–0069 Unfair Labor Practice Records, HHS/OS/ASPER
09–90–0072 Congressioanl Grants Notification Unit, HHS/OS/ASL
09–90–0079 Welfare Fraud Detection File, HHS/OS/OIG
09–90–0080 The Secretary's Advisory Committee Candidate Files, HHS/OS/ES
09–90–0083 Jobs Opportunities and Basic Skills Evaluation Data System (JOBS), HHS/OS/ASPE
09–90–0089 National Long-Term Care Channeling Demonstration, HHS/OS/ASPE
09–90–0095 Management Information System Efficiency Reporter (MISER) HHS/OS/ASPER
09–90–0100 Civil and Administrative Investigative Files of the Inspector General, HHS/OS/OIG
09–90–0101 Health Care Program Violations, HHS/OS/OIG
09–90–0150 Research and Demonstration Data System, HHS/ACF/OCSE

* * * * *

The following routine use should be added as the last routine use in all systems listed above:

* * * * *

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Use

Records may be disclosed to student volunteers, individuals working under a personal services contract, and other individuals performing functions for the Department but technically not having the status of agency employees, if they need access to the records in order to perform their assigned agency functions.

[FR Doc. 94–27702 Filed 11–8–94; 8:45 am]
BILLING CODE 4150–04–M

Food and Drug Administration

[Docket No. 94N–0033]

John D. Copanos; Proposal to Debar; Opportunity for a Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is proposing to issue an order permanently debarring Mr. John D. Copanos under the Federal Food, Drug, and Cosmetic Act (the act). Once debarred, Mr. Copanos would be prohibited from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this proposal on a finding that Mr. Copanos was convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the act. This notice also offers Mr. Copanos an opportunity for a hearing on the proposal. The agency is issuing this notice in the **Federal Register** because all other appropriate means of service of the notice upon Mr. Copanos have proven ineffective.

DATES: Written requests for a hearing by December 9, 1994; information in support of the hearing request due by January 9, 1995.

ADDRESSES: Submit written requests for a hearing and supporting information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Megan L. Foster, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Conduct Related to Conviction

On November 13, 1989, Mr. Copanos agreed to plead guilty to one count of distributing misbranded drugs with intent to defraud and mislead, a Federal felony offense under 21 U.S.C. 331(a) and 333(a)(2) (formerly 333(b)), and one count of manufacturing adulterated drugs with intent to defraud and mislead, a Federal felony offense under 21 U.S.C. 331(k) and 333(a)(2). On February 16, 1990, the United States District Court for the District of Maryland accepted Mr. Copanos' plea of guilty and entered judgment against him for one count of distributing misbranded drugs with intent to defraud and mislead. The underlying facts supporting these felony convictions are as follows:

Mr. Copanos is and was, at the time of his criminal actions, the owner and president of John D. Copanos and Sons, Inc., and Kanasco, Ltd., both companies located at a common facility in Baltimore, MD. He was directly responsible for the manufacturing, packaging, and shipping of his firms' drug products for consumption by the public. Inherent in these responsibilities was the duty to ensure that a drug was manufactured in conformance with the current good manufacturing practice (CGMP) regulations, incluing, but not limited to, the duty to ensure that accurate manufacturing and testing records were ept and that the components of the drugs were pure, safe, and unadulterated.

An investigation, conducted prior to Mr. Copanos' conviction, revealed that he engaged in numerous illegal and fraudulent acts. In April 1989, the U.S. Attorney for the District of Maryland filed a 20–count indictment against him, his firms, and 3 employees of his firms. In November 1989, he agreed to plead guilty to two counts of this indictment.

The first count revealed that Mr. Copanos, along with other employees of his firms, distributed a drug for public use that was misbranded in that its labeling failed to bear adequate directions for use because its labeling failed to warn of the presence of phenylalanine, a component of aspartame. In fact, Mr. Copanos could not accurately describe the conditions for use because he had not conducted adequate testing to determine the effect of aspartame on the stability, potency, and effectiveness of this drug. This drug was also misbranded because its labeling was misleading in that it failed to reveal the presence and amount of phenylalanine, information that is pertinent to the treatment of children afflicted with phenylketonuria, who could suffer irreversible mental retardation if they ingested too much phenylalanine.

The second count for which Mr. Copanos was charged also revealed his disregard for CGMP by his intentional failure to prepare and maintain batch production and control records in order to disguise the adulteration of several of his products. Specifically, Mr. Copanos failed to prepare and maintain results of laboratory tests concerning the sterility of his injectable drug products which tests showed that the product samples tested were contaminated with bacteria.

II. FDA's Finding

Section 306(a)(2)(B) of the act (21 U.S.C. 335a(a)(2)(B) requires debarment

of an individual if FDA finds that the individual has been convicted of a felony under Federal law for conduct relating to the regulation of any drug product. Mr. Copanos' felony convictions for distributing misbranded drugs and for manufacturing adulterated drugs are both related to the regulation of a drug product in that the convictions themselves are felony drug-related convictions under the act. The illegal acts leading to the convictions are direct violations of the primary legislation (the act) regulating drugs. In addition, the convictions relate to, in part, Mr. Copanos' failure to follow the CGMP regulations, which are enforced by FDA, to ensure the safety, identity, strength, quality, and purity of drug products.

Under section 306(l)(2) of the act (21 U.S.C. 335a(1)(2)), mandatory debarment pursuant to section 306(a)(2) applies to an individual convicted of up to 5 years prior to initiation of agency debarment action (such as this notice). Section 306(c)(2)(A)(ii) of the act (21 U.S.C. 335a(c)(2)(A)(ii)) requires that Mr. Copanos' debarment be permanent.

III. Proposed Action and Notice of Opportunity for a Hearing

Based on the findings discussed above, FDA proposes to issue an order under section 306(a)(2)(B) of the act, permanently debarring Mr. John D. Copanos from providing services in any capacity to a person that has an approved or pending drug product application.

In accordance with section 306 of the act and 21 CFR part 12, Mr. Copanos is hereby given an opportunity for a hearing to show why he should not be debarred.

If Mr. Copanos decides to seek a hearing, he must file: (1) A written notice of appearance and request for a hearing on or before December 9, 1994; and (2) the information on which he relies to justify a hearing on or before January 9, 1995. The procedures and requirements governing this notice of opportunity for a hearing, a notice of appearance and request for a hearing, information and analyses to justify a hearing, and a grant or denial of a hearing are contained in 21 CFR part 12 and section 306(i) of the act (21 U.S.C. 335a(i)).

Mr. Copanos' failure to file a timely written notice of appearance and request for a hearing constitutes an election by him not to use the opportunity for a hearing concerning the action proposed, and a waiver of any contentions concerning his debarment. If he does not request a hearing in the manner prescribed by the regulations, the agency will not hold a hearing and will issue the debarment order as proposed in this notice.

A request for a hearing may not rest upon mere allegations or denials but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the information and factual analyses in Mr. Copanos' request for a hearing that there is no genuine and substantial issue of fact which precludes the order of debarment, the Commissioner of Food and Drugs will enter summary judgment against him, making findings and conclusions, and denying a hearing.

The facts underlying Mr. Copanos' conviction are not at issue in this proceeding. The only material issue is whether Mr. Copanos was convicted as alleged in this notice and, if so, whether, as a matter of law, this conviction mandates his debarment.

A request for a hearing, including any information or factual analyses relied on to justify a hearing, must be identified with Docket No. 94N–0033, and sent to the Dockets Management Branch (address above). All submissions pursuant to this notice of opportunity for a hearing are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 306 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 335a) and under authority delegated to the Interim Deputy Commissioner for Operations (21 CFR 5.20).

Dated: November 2, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–27724; Filed 11–8–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94M–0363]

Exogen™, Inc.; Premarket Approval of Sonic Accelerated Fracture Healing System (SAFHS®)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Exogen™, Inc., West Caldwell, NJ, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the Sonic Accelerated Fracture Healing System (SAFHS®). After reviewing the recommendation of the Orthopedic and Rehabilitation Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 13, 1994, of the approval of the application.

DATES: Petitions for administrative review by December 9, 1994.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marie A. Schroeder, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–1296.

SUPPLEMENTARY INFORMATION: On July 18, 1990, Interpore Therasonics, Inc., West Caldwell, NJ 07006, submitted to CDRH an application for premarket approval of the SAFHS®. Subsequently, the ownership was transferred to Exogen™, Inc., West Caldwell, NJ 07006. The Sonic Accelerated Fracture Healing System (SAFHS®) is indicated for acceleration of the time to a healed fracture for fresh, closed, distal radius (Colles') fractures, and fresh, closed or Grade I open tibial diaphysis fractures in skeletally mature individuals when these fractures are orthopedically managed by closed reduction and cast immobilization. The SAFHS® emits a low intensity pulsed ultrasound collimated beam. Ultrasound coupling gel is used on the skin surface at the fracture location where the signal is to be applied.

On November 22, 1991, the Orthopedic and Rehabilitation Devices Panel, an FDA advisory panel, reviewed the application. The original indication in the premarket approval application (PMA) stated that the device was to be used to accelerate the time to heal for all fresh cancellous and cortical bone fractures. The panel concluded that the safety of the device had been established and that the supporting preclinical studies had shown an effect of the device on bone healing. However, the panel members questioned extending the indications to all cortical and cancellous fresh fractures because the data presented in the PMA was limited to fresh closed, Grade I tibia diaphyseal fractures and fresh Colles' fractures. Therefore, the panel recommended that the PMA be found not approvable for the indication stated in the PMA. There were two votes for approval with conditions and three

votes for not approvable. The panel discussed a very limited indication for the device to restrict its application to fresh tibia and fresh Colles' fractures. However, they could not reach a consensus on whether the sponsor had demonstrated effectiveness for the device for both fracture types. Nevertheless, it was the panel's opinion that the effectiveness already seen in some areas could eventually be applicable to others if further data were to be obtained from the study already accomplished. They also suggested that data obtained from a new study could be used to verify the device's performance in the PMA study. The panel recommended that several conditions be satisfied to place the PMA in approvable form. The conditions included a modification to the indication statement to restrict the device's use to the treatment of fresh, closed, distal radius (Colles') fractures and fresh, closed or Grade I open tibial diaphyseal fractures in skeletally mature individuals when these fractures are orthopedically managed by closed reduction and cast immobilization. The applicant amended the PMA to limit the use of the device to this indication. In addition, the panel suggested that the applicant expand the data base to provide additional supportive information. They stated that approval could be granted if the new data were found acceptable by FDA after appropriate review. At the request of FDA, the applicant submitted the results of a long-term followup study of all patients classified as healed at the time the PMA was presented before the panel, and a protocol for a 2-year post approval study to assess the performance of the device as it is marketed for the approved indications. Based on the data submitted in the PMA and the long-term followup study, CDRH determined that the data provide reasonable assurance that the device is safe and effective for the indications as specified in the labeling.

On September 13, 1994, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 9, 1994, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 27, 1994.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 94–27222; Filed 11–8–94; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panels (SEPs) meetings:

Puspose/Agenda: To review Small Business Innovation Research Program grant applications.

Name of SEP: Behavioral and Neurosciences.

Date: November 18, 1994.

Time: 9:00 a.m.

Place: OMNI Shoreham Hotel, Washington, D.C.

Contact Person: Dr. Joseph Kimm, Scientific Review Administrator, 5333 Westbard Ave., Room 309, Bethesda, MD 20892, (301) 594–7257.

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.

Date: November 29, 1994.

Time: 4:00 p.m.

Place: NIH, Westwood Building, Room 219A, Telephone Conference.

Contact Person: Dr. Larry Pinkus, Scientific Review Administrator, 5333 Westbard Ave., Room 219A, Bethesda, MD 20892, (301) 594–7315.

Name of SEP: Clinical Sciences.

Date: November 29, 1994.

Time: 1:00 p.m.

Place: NIH, Westwood Building, Room 219C, Telephone Conference.

Contact Person: Dr. Gopal Sharma, Scientific Review Administrator, 5333 Westbard Ave., Room 219C, Bethesda, MD 20892, (301) 594–7130.

Name of SEP: Biological and Physiological Sciences.

Date: December 1, 1994.

Time: 9:00 a.m.

Place: Holiday Inn, Bethesda, MD.

Contact Person: Dr. Cheryl Corsaro, Scientific Review Administrator, 5333 Westbard Ave., Room 425A, Bethesda, MD 20892, (301) 594–7336.

Name of SEP: Multidisciplinary Sciences.

Date: January 5, 1995.

Time: 1:00 p.m.

Place: Doubletree Hotel, Arlington, VA.

Contact Person: Dr. Donald Schneider, Scientific Review Administrator, 5333 Westbard Ave., Room 2A05, Bethesda, MD 20892, (301) 594–7053.

The meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 4, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–27802 Filed 11–8–94; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3781; FR–3693–N–03]

Announcement of Funding Awards for Training of Trainers and Technical Assistance for Public Housing Resident Patrols

AGENCY: Office of the Assistant Secretary for Public and Indian Housing.

ACTION: Announcement of Funding Awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of the funding award for Fiscal Year (FY) 1994 Technical Assistance to Public Housing Authorities and Public Housing Police Departments. The purpose of this document is to announce the names and addresses of the award winner and the amount of the award.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Cocke, Drug-Free Neighborhoods Division, Office of Resident Initiatives, Public and Indian Housing, Department of Housing and Urban Development, Room 4116, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–1197. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

I. Authority

This grant is authorized under Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et. seq.*), as amended by Section 581 of the National Affordable Housing Act of 1990 (NAHA), approved November 28, 1990, Pub. L. 101–625, and Section 161 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992).

II. Federal Fiscal Year 1994 Funding

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1993, (approved October 28, 1993, Pub. L. 103–124), (94 App. Act) appropriated $265 million for the Drug Elimination Program of which $5 million is to be used for funding technical assistance and training. The funding available under this program is a part of this $5 million.

III. Grant Award

On June 24, 1994 (59 FR 32824), HUD published a Notice of Funding Availability (NOFA) announcing the availability of $300,000.00 in FY 1994 funds for Technical Assistance to Public Housing Authorities and Public Housing Police Departments. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the application announced below, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing details concerning the recipients of funding awards, as follows:

Grant Recipient: Virginia Crime Prevention Association
Recipient Contact Person: Harold Wright
Address: 4914 Radford Ave., #306, Richmond, VA, 23230
Telephone Number: (804) 359–8120
Amount Awarded: $300,000.00
General Objectives:

The United States Department of Housing and Urban Development (HUD) and the Virginia Crime Prevention Association (grantee) have entered into a grant agreement for $300,000.00 of Public and Indian Housing Drug Elimination Program Technical Assistance funds to: (1) develop a training program to train teams of public housing residents and staff in the development and administration of resident patrols, and (2) to provide the training in at least six venues.

This is a cost-reimbursable grant for $300,000.00 for a 1-year base period, with possible optional years. Each additional fiscal year award will be for comparable amounts based upon an evaluation of grant performance and the availability of funds.

Dated: November 3, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–27748 Filed 11–8–94; 8:45 am]

BILLING CODE 4210-33-P

[Docket No. N–94–3780; FR–3687–N–02]

Announcement of Funding Awards for Technical Assistance and Training to Public Housing Authorities for Crime Prevention Through Environmental Design

AGENCY: Office of the Assistant Secretary for Public and Indian Housing.

ACTION: Announcement of Funding Awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of the funding award for Fiscal Year (FY) 1994 Technical Assistance and Training to Public Housing Authorities for Crime Prevention Through Environmental Design. The purpose of this document is to announce the names and addresses of the award winner and the amount of the award.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Cocke, Drug-Free Neighborhoods Division, Office of Resident Initiatives, Public and Indian Housing, Department of Housing and Urban Development, Room 4116, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–1197. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

I. Authority

This grant is authorized under Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et. seq.*), as amended by Section 581 of the National Affordable Housing Act of 1990 (NAHA), approved November 28, 1990, Pub. L. 101–625, and Section 161 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992).

II. Federal Fiscal Year 1994 Funding

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1993, (approved October 28, 1993, Pub. L. 103–124), (94 App. Act) appropriated $265 million for the Drug Elimination Program of which $5 million is to be used for funding technical assistance and training. The funding available under this program is a part of this $5 million.

III. Grant Award

On June 24, 1994 (59 FR 32818), HUD published a Notice of Funding Availability (NOFA) announcing the availability of $200,000 in FY 1994 funds for Technical Assistance and Training for Public and Indian Housing for Crime Prevention Through Environmental Design. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the application announced below, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing details concerning the recipients of funding awards, as follows:

Grant Recipient: SPARTA Consulting Corporation

Recipient Contact Person: Severin Sorensen

Address: P.O. Box 34469, Bethesda, Maryland, 20827

Telephone Number: (301) 656–6600

Amount Awarded: $200,000.00

General Objectives:

The United States Department of Housing and Urban Development (HUD) and the SPARTA Consulting Corporation (grantee) have entered into a grant agreement for $200,000.00 of Public and Indian Housing Drug Elimination Program Technical Assistance funds to: (1) develop a technical assistance (TA) and training program to improve the capacity of public housing staff and residents in their plans for physical changes to enhance security, and (2) to provide the TA and training in a seminar format in at least three venues.

This is a cost-reimbursable grant for $200,000 for a 1-year base period, with possible optional years. Each additional fiscal year award will be for comparable amounts based upon an evaluation of grant performance and the availability of funds.

Dated: November 3, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–27749; Filed 11–8–94; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–01; COC–57597]

Proposed Withdrawal: Opportunity for Public Meeting; Colorado

November 2, 1994.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw approximately 4,580 acres of National Forest System land for 50 years to protect recreational resources and planned and constructed facilities at the Adam's Rib Ski Area. This notice closes this land to location and entry under the mining laws for up to two years. The land remains open to mineral leasing.

DATES: Comments on this proposed withdrawal or requests for public meeting must be received on or before February 7, 1994.

ADDRESSES: Comments and requests for a meeting should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303–239–3706.

SUPPLEMENTARY INFORMATION: On October 26, 1994, the Department of Agriculture, Forest Service, filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws (30 U.S.C. Ch 2):

White River National Forest—Sixth Principal Meridian

T. 6 S., R. 83 W.,
- Sec. 16, SW¼SW¼NW¼, NW¼NW¼SW¼, S½NW¼SW¼, SW¼SW¼, W½SE¼SW¼, and SE¼SE¼SW¼;
- Sec. 17, SE¼NE¼NE¼, N½NE¼SE¼NE¼, S½N½S½NE¼, S½S½N½, N½SW¼NW¼, S½NE¼SE¼NW¼, NW¼SE¼NW¼, and S½;
- Sec. 18, E½E½ lot 11, lots 13, 14, 15, 16, 19, 20, 22, and 23, and W½E½NE¼NE¼, W½NE¼NE¼, S½NE¼, and SE¼;
- Sec. 19, lots 9 and 14 and E½;
- Sec. 20;
- Sec. 21, W½NE¼NE¼, S½NE¼, NW¼NE¼, NW¼, and S½;
- Sec. 22, S½SW¼SW¼;
- Sec. 27, W½W½;
- Sec. 28;
- Sec. 29, N½ and SE¼;
- Sec. 30, NE¼;
- Sec. 33, N½.

The area described contains 4,580 acres of National Forest System land in Eagle County.

The purpose of this withdrawal is to protect recreational resources and planned recreational facilities at the Adam's Rib Ski Area.

For a period of 90 days from the date of publication of this notice, all parties who wish to submit comments, suggestions, or objections in connection with this proposed withdrawal, or to request a public meeting, may present their views in writing to the Colorado State Director. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with 43 CFR 2310.3–1(c)(2).

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2310.

For a period of two years from the date of publication in the **Federal Register**, this land will be segregated from the mining laws as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period the Forest Service will continue to manage these lands.

Doris E. Chelius,

Acting Chief, Branch of Realty Programs.

[FR Doc. 94–27766; Filed 11–8–94; 8:45 am]

BILLING CODE 4310–JB–P

[CO–930–1430–01; COC–57598]

Proposed Withdrawal: Opportunity for Public Meeting; Colorado

November 2, 1994.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw approximately 40 acres of National Forest System land for 20 years to protect the proposed Nederland Work Center. This notice closes this land to location and entry under the mining laws for up to two years. The land remains open to mineral leasing.

DATES: Comments on this proposed withdrawal or requests for public meeting must be received on or before February 7, 1995.

ADDRESSES: Comments and requests for a meeting should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303–239–3706.

SUPPLEMENTARY INFORMATION: On October 27, 1994, the Department of Agriculture, Forest Service, filed an application to withdraw the following

described National Forest System lands from location and entry under the United States mining laws (30 U.S.C. Ch 2):

Roosevelt National Forest

T. 1 S., R. 72 W.,
Sec. 7, lots 30, 31, and 32.

The area described contains approximately 39.99 acres of National Forest System Land in Boulder County.

The purpose of this withdrawal is to provide protection for capitol investments on a proposed Forest Service Work Center.

For a period of 90 days from the date of publication of this notice, all parties who wish to submit comments, suggestions, or objections in connection with this proposed withdrawal, or to request a public meeting, may present their views in writing to the Colorado State Director. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with 43 CFR 2310.3–1(c)(2).

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2310.

For a period of two years from the date of publication in the Federal Register, this land will be segregated from the mining laws as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period the Forest Service will continue to manage these lands.

Doris E. Chelius,

Acting Chief, Branch of Realty Programs.

[FR Doc. 94–27767; Filed 11–8–94; 8:45 am]

BILLING CODE 4310–JB–P

[OR 51291; OR–080–05–1430–01: G5–008; 5–00151]

Realty Action; Proposed Direct Sale

October 28, 1994.

The following described public land has been examined and determined to be suitable for transfer out of Federal ownership by modified competitive sale under the authority of Sections 203 and 209 of the Federal Land Policy and Management Act of 1976, as amended (90 Stat. 2750; 43 U.S.C. 1713 and 90 Stat. 2757; 43 U.S.C. 1719), at not less than the appraised fair market value:

Willamette Meridian, Oreg

T. 1 N., R. 3 W.,
Sec. 3, Lot 2.

The above-described parcel contains 0.80 acre in Washington County.

The parcel will not be offered for sale until at least 60 days after publication of this notice in the Federal Register. The fair market value of the parcel has not yet been determined. Anyone interested in knowing the values may request this information from the address shown below.

The above-described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above-cited statute, for 270 days or until title transfer is completed or the segregation is terminated by publication in the Federal Register, whichever occurs first.

The parcel is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency. No significant resource values will be affected by this transfer. Because of the parcel's relatively small size and equities of two adjoining landowners, its best use is to merge it with one of the adjoining ownerships. The sale is consistent with the Westside Management Framework Plan and the public interest will be served by offering this parcel for sale.

Modified Bidding Procedures

Modified bidding procedures are being used pursuant to 43 CFR 2711.3–2. The parcel is being offered only to Robert F. Dersham et al. (fee owners of Tax Lot 600, Map 1N 3 3) and William Tolke et al. (fee owners of Tax Lot 300, Map 1N 3 11). Use of the modified competitive sale procedures will avoid an inappropriate land ownership pattern and would recognize equities of the individuals involved.

Sealed written bids, delivered or mailed, must be received by the Bureau of Land Management, Salem District Office, 1717 Fabry Road SE, Salem, Oregon 97306, prior to 11:00 a.m. on Wednesday, December 28, 1994. Each written sealed bid must be accompanied by a certified check, postal money order, bank draft or cashier's check, made payable to USDI—Bureau of Land Management for not less than the appraised value of the parcel to be sold, and shall be enclosed in a sealed envelope clearly marked in the lower left hand corner, "Bid for Public Land Sale OR 51291". The written sealed bids will be opened and declared at the sale.

The terms, conditions, and reservations applicable to the sale are as follows:

1. The mineral interests being offered for conveyance have no known mineral value. A bid submitted will also constitute an application for conveyance of the mineral estate, in accordance with Section 209 of the Federal Land Policy and Management Act. All qualified bidders must include with their bid a nonrefundable $50.00 filing fee for the conveyance of the mineral estate.

2. The patent will be subject to:

a. Rights-of-way for ditches or canals will be reserved to the United States under 43 U.S.C. 945; and

b. All valid existing rights and reservations of record.

Detailed information concerning the sale is available for review at the Salem District Office, address above.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the Tillamook Area Manager, Tillamook Resource Area Office, 4610 Third Street, Tillamook, OR 97141. Any adverse comments will be reviewed by the Salem District Manager, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Charles E. Hawkins,

Acting Tillamook Area Manager.

[FR Doc. 94–27688 Filed 11–8–94; 8:45 am]

BILLING CODE 4310–33–M

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–793049

Applicant: Gems of the Jungle, Surfside Beach, South Carolina

The applicant requests a multiple use permit to export, import and reexport 13 tigers (*Panthera tigris*) and 3 leopards (*Panthera pardus*) for enhancement of the species through conservation education.

PRT–796321

Applicant: Peruvian American Chamber of Commerce, Miami, Florida

The applicant requests a permit to import and reexport two captive-bred white-winged guans (*Penelope albipennis*) from/to Gustavo del Solar-Rojas of Lima, Peru, for the purpose of enhancement of survival of the species through conservation education at the upcoming "Summit of the Americas" in Miami, Florida.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203

and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: November 3, 1994.

Margaret Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–27660 Filed 11–8–94; 8:45 am]

BILLING CODE 4310–55–P

Notice of Extension of Public Comment Period on an Environmental Assessment/Habitat Conservation Plan for an Incidental Take Permit for the Proposed Barton Creek Development, Austin, Travis County, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of extension of public comment period.

SUMMARY: The U.S. Fish and Wildlife Service gives notice that the public comment period on the environmental assessment/habitat conservation plan for F.M. Properties Operating Co., Inc's application for an incidental take permit pursuant to section 10(a) of the Endangered Species Act is being extended. The Applicant has been assigned permit number PRT–782833. During the public comment period, the Austin Ecological Services Field Office moved causing delays in some recipients obtaining the environmental assessment/habitat conservation plan for review.

DATES: The comment period for this proposal, which originally closed November 7, 1994, is now extended until November 18, 1994.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Joe Johnston, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 E. Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection, by written request and by appointment only, during normal business hours (8:00 to 4:30). Written data or comments concerning the application and EA/HCP should be submitted to the Acting Field Supervisor, Ecological Services Field Office, Austin, Texas at above address. Please refer to permit number PRT–782833 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Johnston at the above Austin Field Office address.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species, like the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

The Applicant plans to build a Residential-Resort and commercial development located just west of Capital of Texas Highway 360, south of FM 2244, and north of Highway 290, Austin, Travis County, Texas. The development will occupy approximately 4,684 acres. These activities will permanently eliminate about 1,036 acres of the 3,830 acres of occupied and/or suitable warbler habitat. The Applicant proposes to mitigate the incidental take via acquisition and donation of 3,923 acres of land, provision of operating and maintenance funds for these preserve lands, minimize impacts to warbler habitat, avoidance of direct impacts to warblers, preservation of undeveloped areas, and environmental monitoring. The Applicant considered four alternatives but rejected three of them because they were not economically viable.

Lynn B. Starnes,

Regional Director.

[FR Doc. 94–27721 Filed 11–8–94; 8:45 am]

BILLING CODE 4310–55–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–723 (Preliminary)]

Certain Drawer Slides From China

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–723 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China of partial extension commercial roller drawer slides of steel provided for in subheading 8302.42.30 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by December 15, 1994.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: October 31, 1994.

FOR FURTHER INFORMATION CONTACT: Olympia DeRosa Hand (202–205–3182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on October 31, 1994, by Hardware Designers, Inc., Danbury, CT.

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation

upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on November 22, 1994, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Olympia DeRosa Hand (202–205–3182) not later than November 16, 1994, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before November 28, 1994, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: November 1, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–27772 Filed 11–8–94; 8:45 am]

BILLING CODE 7020–02–P

Investigation No. 731–TA–701 (Final)

Disposable Lighters From Thailand

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–701 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Thailand of disposable pocket lighters, provided for in subheadings 9613.10.00 and 9613.20.00 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: October 24, 1994.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202–205–3181), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of disposable pocket lighters from Thailand are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. § 1673b). The investigation was requested in a petition filed on May 9, 1994, by the BIC Corporation, Milford, CT.

Participation in the investigation and public service list.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report.—The prehearing staff report in this investigation will be placed in the nonpublic record on December 22, 1994, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on January 10, 1995, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 27, 1994. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 4, 1995, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and

207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony *in camera*.

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.22 of the Commission's rules; the deadline for filing is January 4, 1995. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.24 of the Commission's rules. The deadline for filing posthearing briefs is January 19, 1995; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before January 19, 1995. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

By order of the Commission.

Issued: November 2, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–27770 Filed 11–8–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–349]

In the Matter of: Certain Diltiazem Hydrochloride and Diltiazem Preparations; Decision Not To Review an Initial Determination Granting Partial Summary Determination of Patent Non-Infringement

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 41) issued on September 29, 1994, by the presiding administrative law judge (ALJ) in the above-captioned investigation granting partial summary determination of patent non-infringement.

FOR FURTHER INFORMATION CONTACT: Mark D. Kelly, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3106.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of violations of section 337 of the Tariff Act of 1930 in the importation, sale for importation, and sale after importation of certain diltiazem hydrochloride and diltiazem preparations, on March 25, 1993. Complainants Marion Merrell Dow, Inc. and Tanabe Seiyaku Co., Ltd. allege the importation and sale of diltiazem hydrochloride and diltiazem preparations manufactured abroad by a process covered by claim 1 of U.S. Letters Patent 4,438,035 (the '035 patent). The notice of investigation named nine respondents: Profarmaco Nobel SRL ("Profarmaco"), Mylan Pharmaceuticals, Inc. and Mylan Laboratories, Inc. (collectively, "Mylan"), Gyma Laboratories of America, Inc. ("Gyma"), Abic Ltd., Orion Corporation, Copley Pharmaceuticals, Inc., Interchem Corporation, and Rhone-Poulenc Rorer, Inc. 58 FR 16846, March 31, 1993. Plantex USA, Inc. was subsequently added as a respondent. 58 FR 34063, June 23, 1993.

On November 5, 1993, respondents Mylan and Profarmaco filed a motion for partial summary determination of non-infringement that Profarmaco's "alternative process" does not infringe claim 1 of the '035 patent. Respondent Gyma subsequently filed its own motion for partial summary determination on the same grounds alleged by Mylan/Profarmaco. On September 29, 1994, the presiding ALJ issued an ID (Order No. 41) granting respondents' motions for partial summary determination of non-infringement.

Complainants filed a petition for review of the ID on October 7, 1994. Respondents Mylan/Profarmaco and Gyma and the Commission investigative attorneys filed responses in opposition to the petition for review.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and § 210.53 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.53. No agency comments on the ID were received.

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

By order of the Commission.

Issued: November 1, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–27771 Filed 11–8–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation 332–357]

Lamb Meat: Competitive Conditions Affecting the U.S. and Foreign Lamb Industries

AGENCY: International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

SUMMARY: Following receipt of a request on October 12, 1994, from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–357, Lamb Meat: Competitive Conditions Affecting the U.S. and Foreign Lamb Industries, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of investigating the competitive conditions affecting the U.S. lamb industry.

EFFECTIVE DATE: October 31, 1994.

FOR FURTHER INFORMATION: Information on industry sectors may be obtained from Rose Steller, Office of Industries (202–205–3323) or David Ludwick, Office of Industries (202–205–3329); economic aspects, from Ronald Babula,

Office of Industries (202–205–3331); and legal aspects, from William Gearhart, Office of the General Counsel (202–205–3091). The media should contact Margaret O'Laughlin, Office of Public Affairs (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810).

Background: As requested by the USTR, the Commission in its report will provide, to the extent practicable, the following:

(1) U.S. and foreign industry profiles;

(2) With respect to Australia and New Zealand, such information as the Commission develops concerning whether there is government assistance to the industries in those countries without regard to whether that assistance may constitute a subsidy under U.S. countervailing duty law;

(3) Information concerning U.S. and foreign markets, U.S. imports and exports, and U.S. market penetration;

(4) Price comparisons of domestic and imported lamb meat; and

(5) Any other information relating to competitive factors that affect the U.S. lamb industry.

As requested, the report will focus on the period 1991–94 and be similar in structure to the last Commission section 332 report on lamb: U.S. Imports of Lamb Meat: Final Monitoring Report (Inv. no. 332–264, USITC Publication 2345, December 1990). The Commission's report will be submitted to the USTR at the earliest possible date, but no later than August 14, 1995.

Public Hearing: A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC, beginning at 9:30 a.m. on February 23, 1995. All persons will have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436, no later than 5:15 p.m. February 9, 1995. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m. February 13, 1995; the deadline for filing post-hearing briefs or statements is 5:15 p.m. March 9, 1995.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on March 9, 1995. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

By order of the Commission.

Issued: November 1, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–27773 Filed 11–8–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–366]

Certain Microsphere Adhesives, Process for Making Same, and Products Containing Same, Including Self-Stick Repositionable Notes; Notice of Decision Not To Review an Initial Determination Granting a Motion for Summary Determination That the Economic Tests for Establishing a Domestic Industry Are Met

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 9) issued on October 10, 1994, by the presiding administrative law judge (ALJ) in the above-captioned investigation. The ID granted a motion of complainant Minnesota Mining and Manufacturing (3M) for summary determination that the economic tests for establishing a domestic industry in this investigation are met.

FOR FURTHER INFORMATION CONTACT: Tim Yaworski, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3096.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of section 337 violations in the importation, the sale for importation, and the sale within the United States after importation of certain microsphere adhesives, and products containing same, including self-stick repositionable notes, said to infringe eight claims of U.S. Letters Patent 4,166,152, on June 8, 1994 (59 FR 29620).

On August 22, 1994, 3M filed a motion that, *inter alia*, requested summary determination that the economic tests for establishing a domestic industry set forth in section 337(a)(3) (19 U.S.C. 1337(a)(3)) are met in this investigation. That request was opposed by the respondents to the investigation and supported by the Commission investigative attorney.

On October 10, 1994, the presiding ALJ issued an ID granting summary determination that the economic tests for establishing a domestic industry are met. There were no petitions for review of the ID and no agency comments were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53, 19 C.F.R. 210.53.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: November 1, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–27774 Filed 11–8–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–721 (Preliminary)]

Wheel Inserts From Taiwan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Taiwan of wheel inserts,[3] provided for in subheading 8708.70.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On September 15, 1994, a petition was filed with the Commission and the Department of Commerce (Commerce) by Consolidated International Automotive, Inc., Los Angeles, CA. The petition alleged that an industry in the United States is being materially injured and is threatened with further material injury, and cited the possibility that the establishment of an industry producing wheel inserts in the United States is materially retarded, by reason of allegedly LTFV imports from the People's Republic of China (China) and Taiwan of wheel inserts. Accordingly, effective September 15, 1994, the Commission instituted antidumping investigations Nos. 731–TA–720 and 721 (Preliminary).[4]

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 22, 1994 (59 FR 48639). The conference was held in Washington, DC, on October 6, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on October 31, 1994. The views of the Commission are contained in USITC Publication 2824 (October 1994), entitled "Wheel Inserts from Taiwan: Investigation No. 731–TA–721 (Preliminary)."

Issued: November 3, 1994

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–27775 Filed 11–8–94; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Newquist dissenting.

[3] The items covered by the scope of Commerce's investigation are wheel inserts, also referred to as lug hole inserts and insert bushings, made from steel, aluminum, brass, or zinc. A wheel insert is a washer-like product with a circular collar that protrudes into a stud hole to provide a protective seat between a lug nut and an aluminum or alloy wheel mounted on ground transportation vehicles. A wheel insert can be heat-treated or non-heat-treated, with or without knurls, and with or without surface coatings. Surface coatings include, but are not limited to, chrome plating, nickel plating, zinc plating (with or without wax coating), oxide coating, and powder coating.

[4] On October 5, 1994, the petitioner filed a letter with the Commission and Commerce withdrawing the petition concerning China. Accordingly, effective October 5, 1994, the Commission discontinued its antidumping investigation concerning wheel inserts from China (inv. No. 731–TA–720 (Preliminary)).

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders or Ms. Judith Groves, Interstate Commerce Commission, Section of Environmental Analysis, Room 3219, Washington, DC 20423, (202) 927–6203 or (202) 927–6246.

Comments on the following assessment are due 15 days after the date of availability:

AB–No. 42 (Sub-No. 79X), The Atchison, Topeka, and Santa Fe Railway Company—Abandonment Exemption—In Atchison County, KS. EA available 10/24/94.

AB–No. 290 (Sub-No. 148X), Norfolk and Western Railway Company—abandonment—Between Lakeside and Hanging Rock, Virginia. EA available 10/28/94.

AB–No. 290 (Sub-No. 147X), Norfolk Southern company—Ababnonment—At Hilltop (Martinsville), Virginia. EA available 10/28/94.

AB–290 (Sub-No. 151X), Norfolk and Western Railway Company—abandonment—Between Phoebe and Concord, Virginia. EA available 11/4/94.

AB–303 (Sub-No. 13X), Wisconsin Central LTD.—Abandonment Exemption—In Brown County, Wisconsin. EA available 11/4/94.

Comments on the following assessment are due 30 days after the date of availability:

AB–167 (SUB-NO. 1141), Consolidated Rail Corporation—abandonment in Hardin County, Ohio. EA available 11/1/94.

AB–167 (ub-No. 1142), Consolidated Rail Corporation—Abandonment—in Summit County, Ohio. Ea available 11/2/94.

Vernon A. Williams,

Secretary.

[FR Doc. 94–27751 Filed 11–8–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 2, 1994, Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule I controlled substance Difenoxin (9168).

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than December 9, 1994.

Dated: November 1, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–27753 Filed 11–8–94; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Registration

By Notice dated March 28, 1994, and published in the Federal Register on April 1, 1994, (59 FR 15458), Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
2,5-dimethoxyamphetamine (7396).	I
Methylphenidate (1724)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Meperidine (9230)	II
Morphine (9300)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Carfentanil (9743)	II
Fentanyl (9801)	II

A registered manufacturer did file a written request for a hearing with respect to Methylphenidate. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted with the exception of Methylphenidate.

Dated: November 3, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–27754 Filed 11–8–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Public Meeting; Federal Committee on Apprenticeship

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1), notice is hereby given that the Federal Committee on Apprenticeship (FCA) will conduct an open meeting on the following three dates and at the following three locations:

November 29, 1994

The Washington Court Hotel on Capitol Hill, 525 New Jersey Avenue, N.W., Washington, D.C. 20001.

West Ballroom

The agenda on *November 29* will include:

9:00 a.m.—Orientation/Administrative Matters
—Call to order; Introduction of FCA Members
—Advisory Committee Video
—Advisory Committee Procedures/Ethics
—Election of FCA Vice Chairs
—Overview of Registered Apprenticeship System
1. National Apprenticeship Act
2. 29 CFR Parts 29 and 30
3. Federal/State Partnership (BAT; SAAs)
4. Registered Apprenticeship System Demographics
5. Apprenticeship Information Management (AIMS) Demonstration

12:00 Noon—Committee Recesses until 11/30/94; 9:00 a.m.

November 30, 1994

The Washington Court Hotel on Capitol Hill, 525 New Jersey Avenue, N.W., Washington, D.C. 20001.

Montpelier Room (2nd Floor)

The agenda on November 30 will include:

9:00 a.m.
—Remarks: Assistant Secretary for ETA and Assistant Secretary for Adult and Vocational Education
—BAT Report/Introduction of BAT National Staff
—Committee Goals/Priorities (expansion, awards program, others)
—Formation of Subcommittees

12:00 Noon—Committee Recesses for Lunch

1:30 p.m.
—Implementation of School-to-Work Opportunities Act
—Upcoming Federal Legislation Affecting/of Interest Apprenticeship
—Women's Bureau Report
—OFCCP Report

4:00 p.m.—Public Comment Period

5:00 p.m.—Committee Recesses until 12/1/94, 9:00 a.m.

December 1, 1994

Note Location Change

Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Dept. of Labor Academy, Room C–5515, Seminar Room 6

The agenda on December 1 will include:

9:00 a.m.—Reports:
—Subcommittee Reports
—NAGLO Report
—NASTAD Report
—Remarks: Secretary of Labor

11:30 a.m.—Other Business

12:00 Noon—Adjournment

The agenda is subject to change due to time constraints and priority items which may come before the Committee between the time of this publication and the scheduled date of the FCA meeting.

Members of the public are invited to attend the proceedings. Individuals with disabilities should contact Marion W. Winters at (202) 219–5943 no later than November 18, 1994, if special accommodations are needed.

Any member of the public who wishes to file written data, views or arguments pertaining to the agenda may do so by furnishing it to the Designated Federal Official at any time prior to the meeting. His address is: Mr. Anthony Swoope, Director, Bureau of Apprenticeship and Training, ETA, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N–4649, Washington, D.C. 20210. Fifteen duplicate copies are needed for the members and for inclusion in the minutes of the meeting.

Any member of the public who wishes to speak at this meeting should so indicate the nature of intended presentation and the amount of time needed by furnishing a written statement to the Designated Federal Official by November 25. The Chairperson will announce at the beginning of the meeting the extent to which time will permit the granting of such requests.

Signed at Washington, DC, this 3rd day of November 1994.

Doug Ross,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 94–27763 Filed 11–8–94; 8:45 am]

BILLING CODE 4510–30–M

Office of the Assistant Secretary for Veterans' Employment and Training; Advisory Committee on Veterans' Employment and Training; Open Meeting

Summary: Pursuant to Section 8 of the Veterans' Benefits Amendments Act of 1991 (Public Law 102–16) and section 9 of the Federal Advisory Committee Act (FACA) (Public Law 92–462, 5 U.S.C. app. II) the Advisory Committee on Veterans' Employment and Training was established. Notice of its establishment was published in the Federal Register on August 10, 1994 (Volume 59 FR 40923). Pursuant to section 10(a) of FACA, this is to announce a meeting of the Advisory Committee which is to take place on December 15, 1994. The purpose of the Advisory Committee is to: Assess the employment and training needs of veterans; determine the extent to which the programs and activities of the Department of Labor are meeting such needs; carry out such other activities

that are necessary to make the reports and recommendations required by law; and, not later than July 1 of each year, the Advisory Committee shall submit to the Secretary of Labor a report on the employment and training needs of veterans.

Time and Place: The meeting will be held on Thursday, December 15, 1994, from 10:00 AM to approximately 12:30 PM, in Room S–2508 at the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C.

Agenda: The agenda for the meeting is as follows:

- Opening of Meeting and Welcoming Remarks
- Introduction of Advisory Committee Members
- Solicitor's Legal Guidance to the Advisory Committee
- Remarks by Assistant Secretary for Veterans' Employment and Training
- Discussion of Focus of Advisory Committee
- Procedures for Presentation of Views to the Advisory Committee
- Closing Remarks and Adjournment
- Public comments, time permitting [last ½ hour].

Public Participation: The meeting will be open to the public. Seating will be available on a first-come, first-served basis. Seats will be reserved for the media. Disabled individuals should contact Mr. Thomas S. Keefe at the address indicated below no later than December 12, 1994, if special accommodations are needed. Individuals or organizations wishing to submit written statements should send ten (10) copies to Mr. Thomas S. Keefe, Special Assistant, Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

For Further Information Contact: Mr. Thomas S. Keefe, Special Assistant, Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–1315, Washington, D.C. 20210, telephone: (202) 219–9116.

Signed at Washington, D.C., this 3rd day of November, 1994.

Preston M. Taylor Jr.,

Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 94–27764 Filed 11–8–94; 8:45 am]

BILLING CODE 4510–79–M

Office of Workers' Compensation Programs

Privacy Act of 1974; New Computer Matching Program

AGENCY: Office of Workers' Compensation Programs, United States Department of Labor.

ACTION: Notice of computer matching program between the Office of Workers' Compensation Programs (OWCP) and the United States Postal Service (USPS) for public comment.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), requires agencies to publish advance notice of computer matching programs as a means of informing benefit recipients/employees of plans to conduct computer matches and to allow public comment. This publishes notice that the OWCP intends to conduct a computer matching program with the United States Postal Service (USPS). This matching program will compare OWCP delinquent debtor records with USPS payroll records to identify postal employees who are delinquent in their repayment of debts owed to the federal government under the Federal Employees' Compensation Act so as to permit OWCP to pursue and collect the debt by voluntary repayment or by salary offset procedures under the Debt Collection Act of 1982 (Pub. L. 97–365).

DATES: Comments must be received no later than December 9, 1994. Unless comments are received that result in a contrary determination, this matching program will become effective 40 days after transmittal of a matching report to the Office of Management and Budget (OMB) or 40 days after transmittal of a matching report and a copy of the matching agreement to the Congress or 30 days after the date of this notice, whichever occurs last.

ADDRESSES: Comments may be mailed to the Director for Federal Employees' Compensation, U.S. Department of Labor, OWCP, 200 Constitution Avenue. NW., Room S–3229, Washington, DC 20210–0002 or delivered to the above address between 8:15 a.m. and 4:45 p.m. Comments received may also be inspected during the above hours.

FOR FURTHER INFORMATION CONTACT: Mr. Alex J. Senecal at the above address or at telephone (202) 219–8461.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, OWCP and USPS have concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies for debt collection. The match will yield the identity and location of OWCP debtors employed by USPS so that OWCP can pursue recoupment of the debt by voluntary payment or by salary offset procedures. Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned.

A copy of the computer matching agreement between OWCP and USPS is available to the public upon request. Requests should be submitted to the address caption above or to the USPS Records Office, 475 L'Enfant Plaza, SW., Washington, DC 20260–5240.

Pursuant to subsection (r) of the Privacy Act of 1974 and the reporting requirements set forth in paragraph 4d of Appendix I to OMB Circular No. A–130, Revised, "Management of Federal Information Resources," dated July 2, 1993 (58 FR 36068–36086), a computer matching program report, including an advance copy of this notice, was submitted to Congress and to the Office of Management and Budget on November 4, 1994. The matching program is subject to review by OMB and Congress and shall not become effective until that review period has elapsed.

Notice of a Computer Matching Program Between the Office of Workers' Compensation Programs and the United States Postal Service for Debt Collection

A. *Participating agencies:* The United States Postal Service (USPS) is the recipient agency and will perform the computer match with debtor records provided by the Department of Labor, Office of Workers' Compensation Programs (OWCP), the source agency in this matching program.

B. *Purpose of the matching program:* The computer match will compare USPS payroll and OWCP delinquent debtor records so that OWCP can identify and locate postal employees who owe delinquent debts to the federal government under the Federal Employees' Compensation Act administered by OWCP. The pay of an employee verified as a delinquent debtor may be offset under the provisions of the Debt Collection Act of 1982 when voluntary payment is not made.

C. *Legal authority for conducting the match:* This matching program will be conducted under the authority of the Debt Collection Act of 1982 (Pub. L. 97–365) which authorizes federal agencies to offset a federal employee's salary as

a means of satisfying delinquent debts owed to the United States (5 U.S.C. 5514(a)). The implementing regulations are contained in 4 CFR Chapter II, Federal Claims Collection Standards (General Accounting Office—Department of Justice). 20 CFR 10.320–324 (Department of Labor) contains OWCP's regulations governing the establishment and recovery of overpayments and 29 CFR 20.74–20.90, Salary Offset (Department of Labor), establishes the Department's regulations governing salary offset when the debtor is a current employee of the United States.

D. *Categories of individuals involved and identification of records used:* The systems of records maintained by the participant agencies under the Privacy Act of 1974 from which records will be disclosed for the purpose of this computer match are:

1. The USPS will use records from its system "Finance Records—Payroll System, USPS 050.020" containing payroll records for approximately 700,000 current USPS employees Disclosure will be made under routine use 24 of that system, a full description of which was last published in 57 FR 57515, dated December 4, 1992.

2. OWCP will use records from its system identified as DOL/GOVT–1, entitled "Office of Workers' Compensation Programs, Federal Employees' Compensation Act File" and containing approximately 1,000 delinquent debt account records. Disclosure will be made under routine use "n" of that system, a full description of which was last published in the **Federal Register** at 58 FR 49548, 49556–8, on September 23, 1993 with amendments published at 59 FR 47361 on September 15, 1994.

E. *Description of the computer matching program:* OWCP will provide to USPS a magnetic computer tape containing the names and Social Security Numbers (SSNs) of its delinquent debtors. By computer, the USPS will compare that information with its payroll file, establishing matched individuals (i.e., "hits") on the basis of like SSNs. For each matched individual, the USPS will provide to OWCP the name, SSN, date of birth, home address, work address, and employee type (permanent or temporary). OWCP will be responsible for verifying and determining if the data of the USPS matched records are consistent with OWCP's source data and will resolve any discrepancies or inconsistencies on an individual basis, conducting independent inquiries when necessary to resolve questionable identities. OWCP will also be responsible for making final determinations as to positive identification, amount of indebtedness and recovery efforts as a result of the match.

F. *Beginning and ending dates of the matching program:* This computer matching program is expected to begin in December, 1994. By agreement between OWCP and USPS, the matching program will continue in effect for a period of 18 months and may be extended for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

Dated: November 4, 1994.

Shelby Hallmark,

Acting Deputy Assistant Secretary, Office of Workers' Compensation Programs.

[FR Doc 94–27765 Filed 11–8–94; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 94–088]

Intent To Grant a Partially Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant a Patent License.

SUMMARY: NASA hereby gives notice of intent to grant Veatronics Corporation of Charlotte, North Carolina 28205, a partially exclusive license to practice the invention protected by U.S. Patent No. 5,140,992 entitled "PASSIVE FETAL MONITORING SENSOR," which was granted on August 25, 1992, by the United States of America as represented by the Administrator of the National Aeronautics and Space Administration.

The partially exclusive license will contain appropriate terms and conditions to be negotiated in accordance with NASA Patent Licensing Regulations (14 CFR 1245). NASA will negotiate the final terms and conditions and grant the license unless, within 60 days of the date of this notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentation. The Director of Licensing will review all written responses to the notice and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the license.

DATES: Comments to the notice must be received by January 9, 1995.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, NASA, Director of Patent Licensing, (202) 358–2041.

Dated: November 1, 1994.

Edward A. Frankle,

General Counsel.

[FR Doc. 94–27727 Filed 11–8–94; 8:45 am]

BILLING CODE 7510–01–M

[Notice 94–089]

Intent To Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent To Grant a Patent License.

SUMMARY: NASA hereby gives notice of intent to grant Pacific Scientific Company of Chandler, Arizona 85226, an exclusive license to practice the invention protected by U.S. Patent No. 5,160,233 entitled "Fastening Apparatus Having Shape Memory Alloy Actuator," which was issued on November 3, 1992, by the United States of America as represented by the Administrator of the National Aeronautics and Space Administration.

The exclusive license will contain appropriate terms and conditions to be negotiated in accordance with NASA Patent Licensing Regulations (14 CFR part 1245). NASA will negotiate the final terms and conditions and grant the license unless, within 60 days of the date of this notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentation. The Director of Licensing will review all written responses to the notice and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the license.

DATES: Comments to the notice must be received by January 9, 1995.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, NASA, Director of Patent Licensing, (202) 358–2041.

Dated: November 1, 1994.

Edward A. Frankle,

General Counsel.

[FR Doc. 94–27761 Filed 11–8–94; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting a notice of information collection that will affect the public. Interested persons are invited to submit comments by December 6, 1994. Copies of materials may be obtained at the NSF address or telephone number shown below.

(A) *Agency Clearance Officer.* Herman G. Fleming, Divisions of Contracts, Policy and Oversight, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, or by telephone (703) 306–1243. Comments may also be submitted to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: Impact of Industry—Engineering Research Center (ERC) Interaction and Effectiveness of ERC-Trained Industrially Employed Engineers.

Affected Public: Individuals, Businesses or other for-profit, and small businesses or organizations.

Respondents/Reporting Burden: 918 respondents: 25 minutes per response.

Abstract: The evaluation examines two aspects of NSF's Engineering Research Center program's mission: the impact (1) on industry of different types of ERC-industry interaction and (2) of ERC training on industrially employed graduates. Survey participants include: ERC industrial partner firm representatives, industrially employed ERC masters and doctoral graduates, graduates' supervisors.

Dated: November 2, 1994.

Herman G. Fleming,

Reports Clearance Officer.

[FR Doc. 94–27701 Filed 11–8–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to OMB for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: 10 CFR Parts 50, 55, and 73—Reduction of Reporting Requirements Imposed on NRC Licensees.

3. The form number if applicable: Not applicable.

4. How often is the collection required: On occasion.

5. Who will be required or asked to report: Nuclear power reactors and material licensees under Parts 50, 55, and 73.

6. An estimate of the number of responses annually: A reduction of 33 submittals of containment leakage test summary test reports (.3 per licensee); a reduction of 50 notifications under § 55.25 (.5 per licensee): and a reduction of 284 submittals of safeguards log events (4 per licensee).

7. An estimate of the number of hours needed annually to complete the requirement or request: Total reduction of 1888.5 hours or 10 hours per licensee.

8. An indication of whether Section 3504(h), Public Law 96–511 applies: Applicable.

9. Abstract: The Nuclear Regulatory Commission (NRC) proposes to amend its regulations to reduce reporting requirements currently imposed on water-cooled nuclear power reactor and nuclear material licensees. This action will result in reducing the regulatory burden on NRC licensees and is the result of an NRC initiative to review its current regulations with the intent to revise or eliminate duplicative or unnecessary reporting requirements. The proposed amendments will: (1) Eliminate the current requirement for licensees to submit to the NRC summary reports of containment leakage rate tests (10 CFR Part 50–Appendix J), but preserve the requirements in §§ 50.72 and 50.73 under which licensees currently report any instances of leakage exceeding authorized limits in the technical specifications of the license; (2) revise 10 CFR 55.25 to refer licensees to a similar reporting requirement in 10 CFR 50.74(c) and require notification of operator incapacity only in case of permanent disability or illness; and (3) eliminate the requirement for quarterly submittal of safeguards event logs presently contained in 10 CFR 73.71(c)(2) and Appendix G to Part 73.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer: Troy Hillier, Office of Information and Regulatory Affairs, (3150–0011, –0018, –0002), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 2d day of November, 1994.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 94–27738 Filed 11–8–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–373 and 50–374]

Commonwealth Edison Co.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Commonwealth Edison Company (the licensee) to withdraw its April 16, 1990, application for proposed amendment to Facility Operating License No. NPF–11 and Facility Operating License No. NPF–18 for the LaSalle County Station, Units 1 and 2, located in Brookfield Township, LaSalle County, Illinois.

The proposed amendment would have revised the technical specification testing requirements for the charcoal adsorber beds and HEPA filters of the Standby Gas Treatment System and Control Room Emergency Filtration System and Supply Filter.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on June 27, 1990 (55 FR 26278). However, by letter dated September 27, 1994, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated April 16, 1990, and the licensee's letter dated September 27, 1994, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Public Library of Illinois Valley Community College, Rural Route No. 1, Oglelsby, Illinois 61348.

Dated at Rockville, Maryland, this 2nd day of November, 1994.

For the Nuclear Regulatory Commission.

William D. Reckley,

Project Manager, Project Directorate III–2, Division of Reactor Projects—IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94–27734 Filed 11–8–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–317 and 50–318]

Baltimore Gas & Electric Co., Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2; Exemption

I

The Baltimore Gas and Electric Company (BG&E/licensee) is the holder of Facility Operation License Nos. DPR–53 and DPR–69, which authorizes operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 (the facilities), respectively. The license provides, among other things, that the facilities are subject to all rules, regulations and Orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facilities are pressurized water reactors located at the licensee's site in Calvert County, Maryland.

The licensee is implementing upgrades to the existing safety-related emergency diesel generators (EDGs) to increase their load capacity. The first part of this effort was to upgrade Unit 1 EDG No. 11 during the previous Unit 1 refueling outage (RFO–11). The second part of the EDG upgrade project is to upgrade Unit 2 EDG No. 21 during the upcoming Unit 2 refueling outage (RFO–10). RFO–10 is scheduled to commence on March 17, 1995, and to be completed in late May 1995. To support this second portion of the upgrades, the licensee has identified one temporary exemption required at this time. The exemption is specified below.

II

The Code of Federal Regulations at 10 CFR Part 50, Appendix A, General Criterion-2 (GDC–2), requires that: Structures, systems, and components important to safety shall be designed to withstand the effects of natural phenomena such as * * * tornadoes, * * * without loss of capability to perform their safety functions.

The licensee has requested the temporary exemption from GDC–2 because of the planned upgrade of the Unit 2 EDG No. 21. The effort will require temporary removal of a steel missile door which will expose portions of the support systems of EDG Nos. 11 and 12. These EDGs are required to be operable to support the operation of Unit No. 1 and the shutdown or refueling of Unit No. 2. These EDGs require protection from the potential effects of postulated missiles generated by natural phenomena. The licensee indicates that the steel missile door will be removed 4 times during RFO–10. The licensee estimates that each of the missile door removals will last for about 24 hours which will result in a total removal time of about 100 hours during the scheduled 65 day outage.

The licensee is providing compensatory action to assure the safe operation of Unit No. 1 and refueling of Unit No. 2 for the short periods of time during which the steel missile door will be removed. To encompass all severe weather conditions as defined in the plant site Emergency Response Plan Implementing Procedures 3.0, Attachment 17, a concerted effort will be made to reinstall the missile door if a tornado or hurricane watch is issued or if sustained winds are predicted to be greater than 50 miles/hour at the site. The only factor which would impede the reinstallation of the missile door would be to ensure the safety of the individuals performing the reinstallation.

Considering the existing design features and compensatory measure proposed by the licensee, the likelihood of damage to the exposed EDG support systems from postulated missiles generated by natural phenomena is minimal for the short periods of time that the protective door will be removed. Also, based on the compensatory measure provided, reasonable assurance exists that the ability to reinstall the missile door will be maintained prior to any severe weather which could result in airborne missiles. Therefore, there is reasonable assurance that the proposed GDC–2 exemption will present no undue risk to public health and safety.

III

The Commission has determined, pursuant to 10 CFR 50.12(a), that, special circumstances as set forth in 10 CFR 50.12(a)(2)(v) exist. The exemption would provide only temporary relief from the applicable regulation (GDC–2). The exemption is requested for a specific time period after which the facility would again be in conformance with all the requirements of GDC–2. The licensee has made good faith efforts in considering alternatives to the exemption request and has concluded that the EDG upgrades can only be conducted without the subject exemption during a period when both units are shut down.

Based on the above and on review of the licensee's submittal, as summarized in the Safety Evaluation, dated October 28, 1994, the NRC staff concludes that the likelihood of unacceptable damage to the exposed portions of the operable EDGs support systems due to weather-induced missiles during the short duration exposures occurring in the exemption period is low.

Based on the low probability of unacceptable events, coupled with the compensatory measure which the licensee has committed to, the NRC staff finds the proposed exemption from GDC–2 to be acceptable.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the subject exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(v), are present justifying the exemption; namely, that the exemption would provide only temporary relief from the applicable regulations and that the licensee has made good faith efforts to comply with the regulations.

Therefore, the Commission hereby approves the following exemption: Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, may operate without conforming to the requirements of GDC–2 as they apply to the exposed portions of the support systems for EDG Nos. 11 and 12 providing that the compensatory measure as described herein is in place for the period of the exemption.

Pursuant to 10 CFR 51.32, the Commission has determined that granting the above exemption will have no significant impact on the quality of the human environment (October 27, 1994, 58 FR 54013).

The subject Unit No. 2 EDG No. 21 upgrade GDC–2 exemption if effective from its date of issuance through May 31, 1994.

Dated at Rockville, Maryland, this 28th day of October, 1994.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–27737 Filed 11–8–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–18999; License No. 37–16492–02 (Expired); EA 94–223]

Old Forge Testing Co.; Old Forge, PA; Order to Cease and Desist Use and Possession of Regulated Byproduct Material

I

Old Forge Testing Company (Licensee or Old Forge) is the holder of expired Byproduct Materials License No. 37–21381–01 (license) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30 on July 7, 1983. The license authorized the possession and use of byproduct material, cesium-137 and americium-241 sealed source(s) in gauges, in accordance with the conditions specified therein. The License expired on December 31, 1993.

II

Since the expiration of the License, the byproduct material has remained in the possession of Old Forge at its S. Keyser Avenue facility, Old Forge, Pennsylvania. The Licensee did not submit an application for renewal of the License pursuant to 10 CFR 30.37 prior to its expiration; nor did the Licensee notify the Commission of a decision not to renew the License, dispose of the byproduct material, and submit a completed form NRC–314, as required pursuant to 10 CFR 30.36.

On May 6, 1994, the NRC Region I, issued a Notice of Violation (NOV) to Old Forge Testing Company, ATTN: Jonathan Szostek, President and Radiation Safety Officer, for possession of material without a valid license in violation of 10 CFR 30.3. The letter forwarding the NOV directed Old Forge to place the radioactive material in its possession in secure storage until such time as it acquired an NRC license, and stated that no other use of that material or purchase of additional material was authorized. Old Forge did not respond to the NOV. Old Forge was contacted on numerous occasions between March 2, 1994 and June 10, 1994, by Region I staff to determine the disposition of the byproduct material. In a March 10, 1994 telephone conversation with NRC Region I, Mr. Szostek stated that he is aware that Old Forge needs a license, but could not currently effort to apply for one. He also stated that the gauge was not being used and that it was in locked storage. On June 15, 1994, the NRC sent Old Forge a letter reminding it that it is in continuous noncompliance with NRC regulations for possessing byproduct material without a valid NRC license, and must transfer the byproduct material to an authorized recipient. By that letter, Old Forge was informed that it it was unable to transfer the material to an authorized recipient within 30 days of the date of that letter, it must inform the NRC, in writing, of the reason why it was unable to do so. As of this date, Old Forge has not responded to the letter, not has it transferred the byproduct material to an authorized recipient. Further, as of this date, Old Forge has not applied for, nor obtained, an NRC license.

III

Old Forge is in possession of byproduct material without a valid NRC license. This is prohibited by Section 81 of the Atomic Energy Act (AEA) of 1954, as amended. Based on the above, Old Forge has violated 10 CFR 30.3, which states that, except for persons exempt as provided in 10 CFR Parts 30 and 150, no person shall possess or use byproduct material except as authorized in a specific or general NRC license. Old Forge has failed to comply with 10 CFR 30.36(b) which requires, in part, that each licensee notify the Commission promptly, in writing, and request termination of the license when the licensee decides to terminate all activities involving materials authorized under the license.

Furthermore, notwithstanding the several notices concerning the above from the NRC and the corresponding opportunities to achieve compliance with the applicable requirements, Old Forge has deliberately violated NRC requirements by possessing cesium-137 and americium-241 sealed source(s) without a license. This conclusion is based on the facts that Old Forge never filed a renewal application before the license issued to Old Forge expired on December 31, 1993, as provided in 10 CFR 30.37; Old Forge has not responded to the NRC Notice of Violation issued on May 6, 1993; Old Forge has not responded to an NRC letter dated June 15, 1994, addressing the previous failure of Old Forge to respond to the Notice of Violation; Old Forge has deliberately not disposed of the radioactive material; Old Forge possesses the radioactive material contrary to 10 CFR 30.3, without a valid NRC specific license; and Mr. Szostek has stated to the NRC on numerous occasions that Old Forge Testing Company intends to apply for a new license but has not done so.

The Atomic Energy Act and the Commission's regulations require that the possession of licensed material be under a regulated system of licensing and inspection. Improper handling of the byproduct material can result in unnecessary exposure to radiation. Because Old Forge has continued to possess byproduct material without a valid license after being notified by NRC that the license has expired and that, since they have not obtained a new license, the material must be transferred to an authorized recipient, Old Forge has demonstrated that they are either unwilling or unable to comply with Commission requirements. Given the circumstances surrounding the possession of the byproduct material without a license by Old Forge, and its failure to respond to the NOV dated March 8, 1993, and to the letter dated June 2, 1994, I lack the requisite reasonable assurance that the health and safety of the public will be protected while Old Forge remains in possession of the radioactive material without the required NRC license.

IV

Accordingly, in accordance with Sections 81, 161b, 161c, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and 10 CFR Parts 20 and 30 of the Commission's regulations, it is hereby ordered that Old Forge Testing Company shall:

A. Immediately cease and desist from any further use of byproduct material now in its possession with the exception that sealed source(s) containing cesium-137 or americium-241 shall be tested for leakage by a person authorized to perform the test prior to transfer of the source(s) to another person or entity, if a leak test has not been performed within the last six months prior to transfer.

B. Maintain safe control over the byproduct material, as required by 10 CFR part 20, by keeping the material in locked storage and not allowing any person access to the material, except for purposes of assuring the material's continued safe storage, until the material is transferred to a person authorized to receive and possess the material in accordance with the provisions of this Order and the Commission's regulations.

C. Transfer all byproduct material to a person authorized to receive and possess it within 30 days of the date of this Order. If Old Forge does not have sufficient funds to complete the transfer, Old Forge must provide, within 10 days of this Order, evidence supporting such a claim by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555: (1) An estimate of the cost of the transfer and the basis for the estimate, including the license numbers and identities of the persons who have provided estimates of the cost of the transfer; (2) written statements from at least two banks stating that Old Forge

does not qualify for a loan to pay for the transfer; (3) copies of the Federal income tax returns of Old Forge for the years ending 1993, 1992, 1991, and 1990; and (4) a signed statement agreeing to allow the NRC to receive credit information on Old Forge from a credit agency. In addition, if Old Forge has not been able to find a person who will accept the byproduct material, Old Forge must provide to the Director, Office of Enforcement, at the address stated above, within 10 days of the date of this Order, the names of the persons who have been contacted regarding acceptance of the byproduct material and the dates that the contacts were made. A submittal of evidence supporting the lack of sufficient funds does not excuse noncompliance with this order.

D. At least two working days prior to the date of the transfer of the byproduct material, notify Dr. Ronald Bellamy, Chief, Nuclear Materials Safety Branch, NRC, Region I, by telephone (610–337–5200) so that the NRC may, if it elects, observe the transfer of the material to the authorized recipient.

E. Within seven days following completion of the transfer, provide to the Regional Administrator, Region I, in writing, under oath or affirmation: (1) Confirmation, on NRC Form 314, that the cesium-137 has been transferred, (2) the last date that the byproduct material was used, (3) a copy of the leak test performed prior to the transfer, (3) a copy of the survey performed in accordance with 10 CFR 30.36(c)(1)(v), and (5) a copy of the certification from the authorized recipient that the source has been received.

Copies of the response to this Order shall be sent to the Regional Administrator, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to the Assistant General Counsel for Hearings and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

After reviewing your response, the NRC will determine whether further action is necessary to ensure compliance with NRC requirements.

Dated at Rockville, Maryland this 1st day of November, 1994.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

[FR Doc. 94–27742 Filed 11–8–94; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–352 and 50–353]

Philadelphia Electric Co.; Limerick Generating Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License Nos. NPF–39 and NPF–85, issued to Philadelphia Electric Company (the licensee), for operation of the Limerick Generating Station (LGS), Units 1 and 2, located in Montgomery County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action

The proposed action would allow implementation of a hand geometry biometric system of site access control such that photograph identification badges can be taken offsite.

The proposed action is in accordance with the licensee's application dated August 10, 1994 for exemption from certain requirements of 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power plant reactors against radiological sabotage."

The Need for the Proposed Action

Pursuant to 10 CFR 73.55, paragraph (a), the licensee shall establish and maintain an onsite physical protection system and security organization.

"Access Requirements," of 10 CFR 73.55(d), paragraph (1), specifies that "licensee shall control all points of personnel and vehicle access into a protected area * * *." It is specified in 10 CFR 73.55(d)(5) that "A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort." It also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual "receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area * * *."

Currently, unescorted access into protected areas of the LGS is controlled through the use of a photograph on a combination badge and keycard. (Hereafter, these are referred to as badges). The security officers at each entrance station use the photograph on the badge to visually identify the individual requesting access. The badges for both licensee employees and contractor personnel who have been granted unescorted access are issued upon entrance at each entrance/exit location and are returned upon exit. The badges are stored and are retrievable at each entrance/exit location. In accordance with 10 CFR 73.55(d)(5), contractor individuals are not allowed to take badges offsite. In accordance with the plants' physical security plans, neither licensee employees nor contractors are allowed to take badges offsite.

The licensee proposes to implement an alternative unescorted access control system which would eliminate the need to issue and retrieve badges at each entrance/exit location and would allow all individuals with unescorted access to keep their badges with them when departing the site.

An exemption from 10 CFR 73.55(d)(5) is required to permit contractors to take their badges offsite instead of returning them when exiting the site.

The Commission has completed its evaluation of the proposed action. Under the proposed system, each individual who is authorized for unescorted entry into protected areas would have the physical characteristics of their hand (hand geometry) registered with their badge number in the access control system. When an individual enters the badge into the card reader and places the hand on the measuring surface, the system would record the individual's hand image. The unique characteristics of the extracted hand image would be compared with the previously stored template to verify authorization for entry. Individuals, including licensee employees and contractors, would be allowed to keep their badge with them when they depart the site.

Based on a Sandia report entitled "A Performance Evaluation of Biometric Identification Devices" (SAND91–0276 UC–906 Unlimited Release, Printed June 1991), and on its experience with the current photo-identification system, the licensee demonstrated that the proposed hand geometry system would provide enhanced site access control. Since both the badge and hand geometry would be necessary for access into the protected area, the proposed system would provide for a positive verification process. Potential loss of a badge by an individual, as a result of taking the badge offsite, would not enable an unauthorized entry into protected areas. The licensee will implement a process for testing the proposed system to ensure continued overall level of performance equivalent to that specified in the regulation. The Physical Security Plans for both sites will be revised to

include implementation and testing of the hand geometry access control system and to allow licensee employees and contractors to take their badges offsite.

The access process will continue to be under the observation of security personnel. A numbered picture badge identification system will continue to be used for all individuals who are authorized access to protected areas without escorts. Badges will continue to be displayed by all individuals while inside the protected area.

Environmental Impacts of the Proposed Action

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the action would be to deny the request. Such action would not change any current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement related to the operation of Limerick Generating Station, Units 1 and 2," dated April 1984.

Agencies and Persons Consulted

The NRC staff consulted with the State of Pennsylvania regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated August 10, October 7, 1994, and October 13, 1994, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Dated at Rockville, Maryland, this 3d day of November, 1994.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–2, Division of Reactor Projects–I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–27740 Filed 11–8–94; 8:45 am]

BILLING CODE 7590–01–M

Illinois Power Co. et al.; Notice of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–62, issued to Illinois Power Company (the licensee), for operation of the Clinton Power Station, Unit 1 (CPS), located in Dewitt County, Illinois.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment will replace the existing Technical Specifications (TS) in their entirety with the Improved Technical Specifications (ITS). The proposed action is in accordance with the licensee's amendment request dated October 26, 1993.

The Need for the Proposed Action

It has been recognized that nuclear safety in all plants would benefit from improvement and standardization of TS. The "NRC Interim Policy Statement on Technical Specification Improvements for Nuclear Power Reactors," ("**Federal Register** 52 FR 3788, February 6, 1987) and later the Final Policy Statement, formalized this need. To facilitate the development of individual ITS, each reactor vendor owners group (OG) and the NRC staff developed standard Technical Specifications. For General Electric (GE) plants, the standard TS (STS) are NUREG–1433 for BWR/4 reactor facilities and NUREG–1434 for BWR/6 facilities. NUREG–1434 formed the basis of the CPS ITS. The NRC Committee to Review Generic Requirements (CRGR) reviewed the STS and made note of the safety merits of the STS and indicated its support of conversion by operating plants to the STS.

Description of the Proposed Change

The proposed revision to the TS is based on NUREG–1434 and on guidance provided in the Policy Statement. Its objective is to completely rewrite, reformat, and streamline the existing TS. Emphasis is placed on human factors principles to improve clarity and understanding. The Bases section has been significantly expanded to clarify and better explain the purpose and foundation of each specification. In addition to NUREG–1434, portions of the existing TS were also used as the basis for the ITS. Plant-specific issues (unique design features, requirements, and operating practices) were discussed at length with the licensee, and generic matters with the GE and other OGs.

The proposed changes from the existing TS can be grouped into four general categories, as follows:

1. Non-technical (administrative) changes, which were intended to make the ITS easier to use for plant operations personnel. They are purely editorial in nature or involve the movement or reformat of requirements without affecting technical content. Every section of the CPS TS has undergone these types of changes. In order to ensure consistency, the NRC staff and the licensee have used NUREG–1434 as guidance to reformat and make other administrative changes.

2. Relocation of requirements, which includes items that were in the existing CPS TS but did not meet the criteria set forth in the Policy Statement for inclusion in TS. In general, the proposed relocation of items in the CPS TS to the Updated Safety Analysis Report (USAR), appropriate plant-specific programs, procedures and ITS Bases follows the guidance of the BWR/6 STS, NUREG–1434. Once these items have been relocated by removing them from the TS to other licensee-controlled documents, the licensee may revise them under the provisions of 10 CFR 50.59 or other NRC staff-approved control mechanisms which provide

appropriate procedural means to control changes.

3. More restrictive requirements, which consist of proposed CPS ITS items that are either more conservative than corresponding requirements in the existing CPS TS, or are additional restrictions which are not in the existing CPS TS but are contained in NUREG–1434. Examples of more restrictive requirements include: Placing a Limiting Condition of Operation (LCO) on plant equipment, which is not required by the present TS to be operable; more restrictive requirements to restore inoperable equipment; and more restrictive surveillance requirements.

4. Less restrictive requirements, which are relaxations of corresponding requirements in the existing CPS TS which provided little or no safety benefit and placed unnecessary burden on the licensee. These relaxations were the result of generic NRC action or other analyses. They have been justified on a case-by-case basis for CPS as described in the Safety Evaluation to be issued with the license amendment, which will be noticed in the **Federal Register.**

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TS. Changes which are administrative in nature have been found to have no effect on technical content of the TS, and are acceptable. The increased clarity and understanding these changes bring to the TS are expected to improve the operator's control of the plant in normal and accident conditions.

Relocation of requirements to other licensee-controlled documents does not change the requirements themselves. Future changes to these requirements may be made by the licensee under 10 CFR 50.59 or other NRC-approved control mechanisms, which assures continued maintenance of adequate requirements. All such relocations have been found to be in conformance with the guidelines of NUREG–1434 and the Policy Statement, and, therefore, to be acceptable.

Changes involving more restrictive requirements have been found to be acceptable.

Changes involving less restrictive requirements have been reviewed individually. When requirements have been shown to provide little or no safety benefit or to place unnecessary burden on the licensee, their removal from the TS was justified. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of a generic NRC action, or of agreements reached during discussions with the OG and found to be acceptable for CPS. Generic relaxations contained in NUREG–1434 have also been reviewed by the NRC staff and have been found to be acceptable.

In summary, the proposed revision to the TS was found to provide control of plant operations such that reasonable assurance will be provided that the health and safety of the public will be adequately protected.

These TS changes will not increase the probability or consequences of accidents, no changes are being made in the types of any effluent that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed TS amendment.

With regard to potential non-radiological impacts, the proposed amendment involves features located entirely within the restricted areas as defined in 10 CFR 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed amendment, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the amendment would be to deny the amendment request. Such action would not enhance the protection of the environment.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for Clinton Power Station.

Agencies and Persons Consulted

The NRC staff consulted with the State of Illinois regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this proposed action, see the licensee's letter dated October 26, 1993. This letter is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Rockville, Maryland this 1st day of November, 1994.

For the Nuclear Regulatory Commission.

Cynthia A. Carpenter,

Acting Director, Project Directorate III–3, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–27741 Filed 11–8–94; 8:45 am]

BILLING CODE 7590–01–M

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 17, 1994, through October 28, 1994. The last biweekly notice was published on October 26, 1994 (59 FR 53834).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in

10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By December 9, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-248-5100 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message

addressed to (*Project Director*): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, et al.

Docket Nos. 50–325 and 50–324

Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina.

Date of amendments request: September 30, 1994.

Description of amendments request: The amendments would revise the Technical Specifications to eliminate the scram and isolation trip functions from the main steam line radiation monitor (MSLRM). This change would specifically remove the reactor scram, main steam line isolation valve closure, main steam line drain valve closure, reactor water sample line isolation, and mechanical vacuum pump line isolation actuated on a MSLRM High-High Radiation signal. The actuation signal for isolation of the reactor water sample line will be replaced with a low condenser vacuum signal. The isolation of the mechanical vacuum pump line will be changed to a signal from the main stack radiation monitor.

The MSLRMs will have both High Radiation and High-High Radiation alarms. The setpoint for the MSLRM High Radiation alarm will be set at or below 1.5 times the nominal full power background radiation adjusted for Hydrogen water chemistry operation. The setpoint for the condenser off-gas radiation monitor will be set at a value of 1.5 times background radiation, but not less than 1.5 Rem per hour.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated. The deletion of the MSLRM trip function from the reactor scram and the Group 1 isolation initiation logic removes a potential transient initiation and therefore decreases the probability of plant transients occurring due to inadvertent scrams resulting from this system.

The deletion of the MSLRM trip function from the Main Steam Drain Valve, the Reactor Water Sample Isolation Valve, and the Mechanical Vacuum Pump line isolation logic, does not affect the initiators of any accident previously evaluated in the Safety Analysis Report. Therefore, the proposed change does not involve an increase in the probability of occurrence of any accident previously evaluated.

The NRC staff acceptance criterion for the Control Rod Drop Accident is that the doses from the accident fall significantly below the limits given in 10 CFR Part 100. The releases calculated for accident during plant operations when the Steam Jet Air Ejectors (SJAE) are operating and when the Mechanical Vacuum Pumps are operating are within these acceptance limits.

In NEDO–31400, GE shows that the occurrence of a CRDA, with the MSL high radiation isolation removed, and SJAE in operation, results in offsite radiological exposures that are small fractions of 10CFR100 guidelines. Since the Brunswick specific CRDA doses are lower than the [sic] calculated by GE and the GE dose parameters envelope those used for the Brunswick analysis, it is concluded that the NRC's findings that the radiological release consequence is within the staff's acceptance criteria, even without the automatic MSIV trip, is applicable to Brunswick.

While not specifically addressed in the GE evaluation, Carolina Power and Light also proposes to eliminate the Main Steam Line Drain valves, the Reactor Water Sample Line isolation valves, and the mechanical vacuum line isolation valves from the MSLRM isolation logic. Main Steam Line Drain Valves B21–F016 and B21–F019 drain to the main condenser, which is the same flow path as the MSIVs. The discharge of both the MSIV and MSL drain flow paths is processed through the offgas system. Any radiation released through the drain valves during a control rod drop accident will be negligible and, for Brunswick, is bounded by the NEDO analysis.

The reactor water sample line provides a small amount of reactor water to the Reactor Building Sample Panel. The discharge of the Reactor Building Sample Panel is routed through the floor drain sump to the liquid radwaste system. Any releases through this path would be negligible and, for Brunswick, is bounded by the NEDO analysis.

The mechanical vacuum pumps are used only when the reactor is at low power (less than 5%) and there is insufficient steam flow to operate the Steam Jet Air Ejectors. The increase in radiation will be detected by the MSLRMs and annunciated in the Main Control Room. Operators will be instructed, in the annunciator response procedures, to take action to stop the Mechanical Vacuum Pump(s) and isolate the Mechanical Vacuum Pump line. The amount of radiation released prior to isolating the line would represent the most limiting case for this accident. However, it will still be well within 10 CFR Part 100 limits. Additionally, the dose received in the Main Control Room as a result of this accident is within General Design Criteria 19 (SRP 6.4) limits.

Therefore, since elimination of the MSIV [sic, MSLRM] scram and isolation functions would not result in an increase in exposure above NRC acceptance limits, the proposed changes will not significantly increase the consequences of a previously evaluated accident.

2. The proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated. The function of a MSLRM trip is to detect abnormal fission product release and isolate the steam lines, thereby stopping the transport of fission products from the reactor to the main condenser. The monitors do not perform a prevention function for any kind of accident. The existence of a MSLRM trip does not prevent the occurrence of a fuel failure event or any other type of event. The elimination of these signals, which served only in a mitigative function, does not create the possibility of a new or different kind of accident from those previously evaluated. Also, radiation monitors with alarm functions will remain installed in the plant to warn the operators of a high radiation condition in the main steam lines, or in the off-gas system. Thus no new or different

accident can be postulated by the proposed changes.

3. The proposed amendments do not involve a significant reduction in a margin of safety. As shown in the topical report, the changes represent an overall improvement in plant safety. Safe operation of the plant is further enhanced by elimination of the unnecessary scram and isolation of the reactor vessel. With implementation of these changes, 1) the primary heat sink (main condenser) remains available, 2) large transients on the reactor vessel, as well as challenges to the ESF, are avoided, and 3) the Offgas system remains available to control the pathway of potential releases. As such, the margin of safety is enhanced by the proposed changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Acting Project Director: Michael L. Boyle.

Carolina Power & Light Company

Docket No. 50–261

H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina.

Date of amendment request: October 7, 1994.

Description of amendment request: The proposed amendment would revise the introduction to TS Section 6.9.3.3 to require the approved revision number for the referenced analytical methods be listed in the Core Operating Limits Report. The methodology referenced in 6.9.3.3.b.f (XN–NF–82–49(A)) will be updated to clarify that all supplements are included. New methodologies ANF–89–151(A) and EMF–92–081(A) will be added to TS Section 6.9.3.3.b.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes will have no influence on the probability of an accident previously evaluated. No changes will be made to any safety related equipment, systems, or setpoints used in determining the probability of an evaluated accident. The plant design basis will not be altered. Therefore, there will be no significant increase in the probability of an accident previously evaluated.

Consequences are dependent on the type of accident and the mitigating response of safety related equipment. Furthermore, the magnitude of consequences are calculated, directly or through supporting calculations, by use of NRC approved methodologies. The proposed license amendment will not alter the function of safety related equipment designed to mitigate the consequences of an accident previously evaluated or allow operation of the facility outside any current limitations or restrictions. Also, this amendment will not alter the requirement that evaluation of the consequences of an accident previously evaluated by determined/supported with NRC reviewed and approved methodologies. The change to TS Section 6.9.3.3.b's introductory wording satisfies an administrative commitment and the requirements it adds are administrative in nature. Accordingly the proposed license amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The addition of and update to NRC previously reviewed and approved methodologies in TS Section 6.9.3.3.b will not result in any design or function changes to any safety related equipment designed to prevent and/or mitigate accidents, to any setpoints or systems, or to any portion of the plant design basis. Operation of the facility will remain within all required limitations and/or restrictions. The change to TS Section 6.9.3.3.b's introductory wording satisfies an administrative commitment and the requirements it adds are administrative in nature. Therefore, the proposed amendment will not create the possibility of a new kind of accident from any accident previously evaluated.

The addition of and update to NRC previously reviewed and approved methodologies in TS Section 6.9.3.3.b will not result in any design or function changes to any safety related equipment designed to prevent and or mitigate accidents, to any setpoints or systems, or to any portion of the plant design basis. Operation of the facility will remain within all required limitations and/or restrictions. The changes to TS Section 6.9.3.3.b's introductory wording satisfies an administrative commitment and the requirements it adds are administrative in nature. Therefore, the proposed amendment will not create the possibility of a different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety. The proposed license amendment is defined as administrative in nature. No current operational limits, restrictions, or operating modes of the facility and its equipment, safety related or otherwise, designed to preserve the margin of safety will be changed or affected by the proposed amendment. There will be no changes to setpoints or to the plant design basis. The methodology proposed for addition to TS Section 6.9.3.3.b and the methodology that will be updated has been previously reviewed and approved by the NRC. The change to TS Section 6.9.3.3.b's introductory wording satisfies an administrative commitment and the requirements it adds are administrative in nature. Accordingly the proposed license amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550.

Attorney for licensee: R.E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: William H. Bateman.

Entergy Operations, Inc., et al.

Docket No. 50–416

Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi.

Date of amendment request: October 12, 1994.

Description of amendment request: The proposed amendment requests the closure and deletion of License Condition 2.C.(26) related to turbine disk integrity.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

The proposed change would close and delete License Condition 2.C.(26). The approved methodology currently used to evaluate the probability of rotor failure and the inspection interval will not be changed. The closure and deletion of the license condition is an administrative change and will affect any accident previously evaluated.

The bounding accident for the turbine-generator as analyzed in the Grand Gulf Nuclear Station (GGNS) Updated Final Safety Analysis Report (UFSAR) is the occurrence of an external missile resulting from the failure of a low pressure (LP) turbine disc. The probability of this incident occurring is less than 1×10^{-5} per year, which is the NRC acceptable failure criterion for probability.

Any extension to the service interval in the future will be evaluated in accordance with the current methodology. The original acceptable levels of failure will be maintained. Therefore, no significant increase in the probability or consequences of a previously evaluated accident results from this change.

2. The change would not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change does not involve a change to the control logic or operating procedures for the turbine but rather transfers the control of the LP turbine disc inspection interval from the Operating License to administrative control. The current approved methodology will continue to be used when determining future inspection intervals.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The change would not involve a significant reduction in a margin of safety.

Closing and deleting the current license condition for LP turbine disc inspections and controlling the inspection interval administratively has no adverse effects to the margin of safety. The current approved methodology for failures will continue to be used and any changes to future inspection intervals will be evaluated by the methodology. This change does not affect any previous safety analysis presented in the UFSAR and does not affect the criteria used to establish safety limits, the basis for limiting safety system settings, the basis for limiting conditions of operation, a change to the technical specifications or a change in plant operations.

Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, Mississippi 39120.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005–3502.

NRC Project Director: William D. Beckner.

Florida Power and Light Company

Docket Nos. 50–250 and 50–251

Turkey Point Plant, Units 3 and 4, Dade County, Florida.

Date of amendment request: October 20, 1994.

Description of amendment request: The licensee proposes to change Turkey Point, Units 3 and 4 Technical Specifications (TS) by revising TS 1.9, Definitions—CORE ALTERATIONS to only address activities which may, in actuality, affect core reactivity. In addition, the licensee proposes to revise TS 3.9.4, Containment Building Penetrations to allow both containment personnel airlock (PAL) doors to be open during core alterations and movement of irradiated fuel in containment provided (a) that at least one PAL door is capable of being closed; (b) the plant is in Mode 6 with at least 23 feet of water above the fuel; and (c) a designated individual is available outside the PAL to close the door. The licensee also proposes a revision to the footnote of TS 3.9.4, to remove the description of the purpose for imposing administrative controls.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The change in the definition of CORE ALTERATIONS would allow the movement of a temporary source range detector or other small components, such as cameras, tools, etc., within the reactor vessel without the activity being considered CORE ALTERATIONS. The potential exists, however small, that an object can be dropped into the reactor vessel. However, the justification for this change, is that the insertion of small components into the reactor vessel will have no effect on core reactivity since these items displace a small volume of borated water, and sufficient borated water will surround the components and provide the necessary neutron absorption to neutronically isolate the components from the reactor. The consequences of dropping one of these small components into the vessel are bounded by the In-Containment Fuel Handling Accident Analysis discussed in Chapter 14.2.1 of the Turkey Point Updated Final Safety Analysis Report (UFSAR). Therefore, the proposed change is bounded by the current and the proposed In-Containment Fuel Handling Accident Analyses and will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to TS 3.9.4 would allow the containment personnel airlock (PAL) doors to be open during fuel movement and core alterations. Currently, a single PAL door is closed during fuel movement and core alterations to prevent the escape of radioactive material in the event of a in-containment fuel handling accident. The PAL is not an initiator of an accident. Whether the PAL doors are open or closed during fuel movement and core alterations has no affect on the probability of any accident previously evaluated.

Allowing the PAL doors to be open during fuel movement and core alterations does not increase the consequences from a fuel handling accident. The calculated offsite doses are well within the limits of 10 CFR Part 100. In addition, the calculated doses are larger than the expected doses because the calculation does not incorporate the closing of the PAL door after the containment is evacuated. The proposed change should significantly reduce the dose to workers in containment in the event of a fuel handling accident by reducing the time required to evacuate the containment. The proposed change will also significantly decrease the wear on the PAL doors and, consequently, increase

the availability of the PAL doors in the event of an accident.

The proposed change to the footnote of TS 3.9.4 is administrative in nature, and does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes being proposed do not affect assumptions contained in plant safety analyses or the physical design of the plant, nor do they affect Technical Specifications that preserve safety analysis assumptions. Therefore, operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously analyzed.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The change in the definition of CORE ALTERATIONS would allow the movement of a temporary source range detector or other small components, such as cameras, tools, etc., within the reactor vessel without the activity being considered CORE ALTERATIONS. The potential exists however small, that an object can be dropped into the reactor vessel. However, the justification for this change, is that the insertion of small components into the reactor vessel will have no effect on core reactivity since these items displace a small volume of borated water, and sufficient borated water will surround the components and provide the necessary neutron absorption to neutronically isolate the components from the reactor. The consequences of dropping one of these small components into the vessel are bounded by the In-Containment Fuel Handling Accident Analysis discussed in Chapter 14.2.1 of the Turkey Point UFSAR. Therefore the proposed change is bounded by the current and the proposed In-Containment Fuel Handling Accident Analyses and will not create the possibility of a new or different kind of accident.

The proposed change to Specification 3.9.4 affects a previously evaluated accident, i.e., in-containment fuel handling accident. Both the current and the proposed In-Containment Fuel Handling Accident Analysis assume that all of the iodines and noble gases that become airborne within the containment escape and reach the site boundary and low population zone with no credit taken for the containment building barrier or for decay or deposition taken. Since the proposed change does not involve the addition or modification of equipment nor does it alter the design of plant systems and the revised analysis is consistent with the current In-Containment Fuel Handling Accident Analysis, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to the footnote of TS 3.9.4 is administrative in nature and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The change in the definition of CORE ALTERATIONS would allow the movement of a temporary source range detector or other small components, such as cameras, tools, etc., within the reactor vessel without the activity being considered CORE ALTERATIONS. The potential exists however small, that an object can be dropped into the reactor vessel. However, the justification for this change, is that the insertion of small components into the reactor vessel will have no effect on core reactivity since these items displace a small volume of borated water, and sufficient borated water will surround the components and provide the necessary neutron absorption to neutronically isolate the components from the reactor. The consequences of dropping one of these small components into the vessel are bounded by the Fuel Handling Accident Analysis discussed in Chapter 14.2.1 of the Turkey Point UFSAR. Therefore, the proposed change is bound by the current In-Containment Fuel Handling Accident Analyses and as a result will not involve a significant reduction in a margin of safety.

The margin of safety as defined by 10 CFR Part 100 has not been reduced. There is no increase in calculated offsite dose resulting from a fuel handling accident in containment and the calculated dose is a small fraction of the limits given in 10 CFR Part 100. The proposed changes do not alter the bases for assurance that safety-related activities are performed correctly or the basis for any Technical Specification that is related to the establishment of or maintenance of a safety margin. Therefore, operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The proposed change to the footnote of TS 3.9.4 is administrative in nature and does not relate to or modify the safety margins defined in, and maintained by, the Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: Mohan C. Thadani, (Acting)

Florida Power and Light Company

Docket Nos. 50–250 and 50–251

Turkey Point Plant, Units 3 and 4, Dade County, Florida.

Date of amendment request: October 20, 1994.

Description of amendment request: This supersedes the licensee's original request dated July 19, 1994, and noticed in the **Federal Register** on August 3, 1994 (59 FR 39588). The licensee proposes to change Turkey Point, Units 3 and 4 Technical Specifications (TS) 4.8.1.1.2e. and 4.8.1.1.2f., which address Emergency Diesel Generator (EDG) fuel oil testing, by replacing the specific EDG fuel oil Surveillance Requirements with the requirement to verify new and stored EDG fuel oil in accordance with the Diesel Fuel Oil Testing Program. In addition, the licensee proposes the addition of ACTION statements g. and h., to TS 3.8.1.1, to address the required action in the event the diesel fuel oil does not meet the Diesel Fuel Oil Testing Program limits. The Diesel Fuel Oil Testing Program will be described in both TS 6.8.4 and the BASES Section to the Technical Specifications. In addition, FPL proposes revising TS 6.8.1 to include the requirement that written procedures shall be established, implemented and maintained for implementation of the Diesel Fuel Oil Testing Program.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the Technical Specifications will permit the Technical Specification required testing of Emergency Diesel Generator (EDG) fuel oil in accordance with the Turkey Point, Units 3 and 4 Diesel Fuel Oil Testing Program. The proposed change will permit FPL to use more recent editions of the American Society for Testing and Materials (ASTM) standards currently listed in Technical Specification Surveillance Requirements 4.8.1.1.2e. and 4.8.1.1.2f. Prior to changing the Diesel Fuel Oil Testing Program, the proposed change will be evaluated pursuant to Title 10 Code of Federal Regulations § 50.59 (10 CFR § 50.59), "Changes, tests, and experiments." Title 10 CFR § 50.59 permits a licensee to make changes in the procedures as described in the safety analysis report without prior Commission approval, provided that the proposed changes does not involve an unreviewed safety question.

Title 10 CFR § 50.59(a)(2) states that a proposed change involves an unreviewed safety question (i) if the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report may be increased. Consequently, since any change to the Diesel Fuel Oil Testing Program, including the ASTM standard or ASTM edition standard to be used to evaluate EDG fuel oil acceptability, the change must be evaluated relative to the more restrictive evaluation criterion of 10 CFR § 50.59, then operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated. The EDG fuel oil TS Surveillance Requirements will be replaced with a requirement to test the EDG fuel oil in accordance with the Turkey Point Units 3 and 4 Diesel Fuel Oil Testing Program.

ACTION statement g. of TS 3.8.1.1 is added to address the required action in the event the new fuel oil properties do not meet the Diesel Fuel Oil Testing Program limits. A failure to meet the American Petroleum Institute (API) gravity, kinematic viscosity, flash point or clarity limits is cause for rejecting the new fuel oil prior to the addition to the Diesel Fuel Oil Storage Tanks, but does not represent a failure to meet the Limiting Condition for Operation (LCO) of TS 3.8.1.1, since the new fuel oil has not been added to the storage tanks. Provided these new fuel oil properties are met subsequent to the addition of the new fuel oil to the storage tanks, 30 days is provided to complete the analyses of the other fuel oil properties specified in Table 1 of ASTM–D975–81, except sulfur which may be performed in accordance with ASTM–D1552–79 or ASTM–D2622–82. In the event the other new fuel oil properties specified in Table 1 of ASTM–D975–81 are not met, ACTION statement g. of TS 3.8.1.1 provides an additional 30 days to meet the Diesel Fuel Oil Testing Program limits. This additional 30 day period is acceptable because the fuel oil properties of interest, even if they are not within limits, would not have an immediate effect on EDG operation.

ACTION statement h. of TS 3.8.1.1 is added to address the required action in the event the stored fuel oil total particulates do not meet the Diesel Fuel Oil Testing Program limits. Fuel oil degradation during long term storage shows up as an increase in particulate, due mostly to oxidation. The presence of particulate does not mean the fuel oil will not burn properly in a diesel engine. The frequency for performing surveillance on stored fuel oil is based on stored fuel oil degradation trends which indicate that particulate concentration is unlikely to change significantly between surveillances.

Prior to changing the Turkey Point Units 3 and 4 Diesel Fuel Oil Testing Program, FPL will need to determine if the proposed program change is at least as, if not more, effective, in detecting unsatisfactory fuel oil. The EDGs will thus continue to function as designed and the probability or consequences of previously evaluated accidents will be unaffected.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the Technical Specifications will permit the Technical Specification required testing of Emergency Diesel Generator fuel oil using more recent editions of the American Society for Testing and Materials (ASTM) standards currently listed in Technical Specification Surveillance Requirements 4.8.1.1.2e. and 4.8.1.1.2f. Prior to changing the edition of the previously approved ASTM standard being used to evaluate the EDG fuel oil, the proposed edition standard will be evaluated pursuant to 10 CFR § 50.59, "Changes, tests, and experiments." Title 10 CFR § 50.59 permits a licensee to make changes in the procedures as described in the safety analysis report without prior Commission approval, provided that the proposed changes does not involve an unreviewed safety question. Title 10 CFR § 50.59(a)(2) states that a proposed change involves an unreviewed safety question (ii) if a possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis report may be created. Consequently, since any change to the edition of the ASTM standard to be used to evaluate EDG fuel oil acceptability must be evaluated relative to the more restrictive evaluation criterion of 10 CFR § 50.59, then operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

ACTION statement g. of TS 3.8.1.1 is added to address the required action in the event the new fuel oil properties do not meet the Diesel Fuel Oil Testing Program limits. A failure to meet the API gravity, kinematic viscosity, flash point or clarity limits is cause for rejecting the new fuel oil prior to the addition to the Diesel Fuel Oil Storage Tanks, but does not represent a failure to meet the Limiting Condition for Operation (LCO) of TS 3.8.1.1, since the new fuel oil has not been added to the storage tanks. Provided these new fuel oil properties are met subsequent to the addition of the new fuel oil to the storage tanks, 30 days is provided to complete the analyses of the other fuel oil properties specified in Table 1 of ASTM–D975–81, except sulfur which may be performed in accordance with ASTM–D1552–79 or ASTM–D2622–82. In the event the other new fuel oil properties specified in Table 1 of ASTM–D975–81 are not met, ACTION statement g. of TS 3.8.1.1 provides an additional 30 days to meet the Diesel Fuel Oil Testing Program limits. This additional 30 day period is acceptable because the fuel oil properties of interest, even if they are not within limits, would not have an immediate effect on EDG operation.

ACTION statement h. of TS 3.8.1.1 is added to address the required action in the event the stored fuel oil total particulates does not meet the Diesel Fuel Oil Testing Program limits. Fuel oil degradation during long term storage shows up as an increase in particulate, due mostly to oxidation. The presence of particulate does not mean the fuel oil will not burn properly in a diesel engine. The frequency for performing surveillance on stored fuel oil is based on stored fuel oil degradation trends which indicate that particulate concentration is unlikely to change significantly between surveillances.

Prior to changing the Turkey Point Units 3 and 4 Diesel Fuel Oil Testing Program, FPL will need to determine if

the proposed program change is at least as, if not more, effective, in detecting unsatisfactory fuel oil. Since the proposed changes do not involve a change in the design of any plant system or component, and since the proposed changes will need to evaluate the effect of any ASTM standard edition change on the level of EDG reliability, the change proposed will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The proposed changes to the Technical Specifications will permit the Technical Specification required testing of Emergency Diesel Generator (EDG) fuel oil using more recent editions of the American Society for Testing and Materials (ASTM) standards currently listed in Technical Specification Surveillance Requirements 4.8.1.1.2e. and 4.8.1.1.2f. Prior to changing the edition of the previously approved ASTM standard being used to evaluate the EDG fuel oil, the proposed edition standard will be evaluated pursuant to 10 CFR § 50.59, "Changes, tests, and experiments." Title 10 CFR § 50.59 permits a licensee to make changes in the procedures as described in the safety analysis report without prior NRC approval, provided that the proposed changes does not involve an unreviewed safety question. Title 10 CFR § 50.59(a)(2) states that a proposed change involves an unreviewed safety question (iii) if the margin of safety as defined in the basis for any technical specification is reduced. Consequently, since any change to the edition of the ASTM standard to be used to evaluate EDG fuel oil acceptability must be evaluated relative to the more restrictive evaluation criterion of 10 CFR § 50.59, then operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

ACTION statement g. of TS 3.8.1.1 is added to address the required action in the event the new fuel oil properties do not meet the Diesel Fuel Oil Testing Program limits. A failure to meet the API gravity, kinematic viscosity, flash point or clarity limits is cause for rejecting the new fuel oil prior to the addition to the Diesel Fuel Oil Storage Tanks, but does not represent a failure to meet the Limiting Condition for Operation (LCO) of TS 3.8.1.1, since the new fuel oil has not been added to the storage tanks. Provided these new fuel oil properties are met subsequent to the addition of the new fuel oil to the storage tanks, 30 days is provided to complete the analyses of the other fuel oil properties specified in Table 1 of ASTM–D975–81, except sulfur which may be performed in accordance with ASTM–D1552–79 or ASTM–D2622–82. In the event the other new fuel oil properties specified in Table 1 of ASTM–D975–81 are not met, ACTION statement g. of TS 3.8.1.1 provides an additional 30 days to meet the Diesel Fuel Oil Testing Program limits. This additional 30 day period is acceptable because the fuel oil properties of interest, even if they are not within limits, would not have an immediate effect on EDG operation.

ACTION statement h. of TS 3.8.1.1 is added to address the required action in the event the stored fuel oil total particulates does not meet the Diesel Fuel Oil Testing Program limits. Fuel oil degradation during long term storage shows up as an increase in particulate, due mostly to oxidation. The presence of particulate does not mean the fuel oil will not burn properly in a diesel engine. The frequency for performing surveillance on stored fuel oil is based on stored fuel oil degradation trends which indicate that particulate concentration is unlikely to change significantly between surveillances.

Prior to changing the Turkey Point Units 3 and 4 Diesel Fuel Oil Testing Program, FPL will need to determine if the proposed program change is at least as, if not more, effective, in detecting unsatisfactory fuel oil. Since the proposed changes will require a safety evaluation to assure that the reliability of the EDGs using fuel oil tested in accordance with the different ASTM standard edition maintains the current margin of safety, the proposed changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: Mohan C. Thadani, Acting.

Florida Power Corporation, et al.

Docket No. 50–302

Crystal River Nuclear Generating Plant, Unit No. 3, Citrus County, Florida.

Date of amendment request: September 30, 1994.

Description of amendment request: The proposed amendment would revise the Crystal River 3 (CR3) Nuclear generating Plant Technical Specifications (TS) to allow an increase in the rated thermal power (RTP) for CR–3 from the current 2544 level to 2568 Megawatt thermal (Wt). Accordingly, in TS 1.1, "Definitions," would be revised to indicate the new power level of 2568 MWt. The proposed change would not require any hardware modifications.

Basis for proposed no significant hazards consideration determination: Currently, CR–3 is operating at a maximum RTP of 2544 MWt. The licensee proposes to operate at a maximum RTP of 2568 MWt, an increase of 24 MWt over the current licensed power of 2544 MWt.

The licensee states that the Babcock and Wilcox (B&W) 177 Fuel Assembly (FA) Nuclear Steam Supply System (NSSS) in the CR3 design is capable of operating at a thermal power level of 2772 MWt. Due to limitations in the secondary area of the plant, the licensee requests authorization to operate at 2568 MWt which is less than the design level of 2772 MWt. The licensee performed a detailed engineering study on this power increase.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated. The thermal-hydraulic and nuclear characteristics of the reactor core were originally designed for a rated thermal power of 2568 MWt or higher. Therefore, the proposed thermal power increase to the reference power level of 2568 MWt does not change the original design assumptions and analyses for the reactor core. Most of the design basis accidents and transients were originally evaluated at the proposed power level. As described more fully in this submittal, those transients and accidents that were not originally evaluated at 2568 MWt were re-evaluated using CR–3 FSAR [Final Safety Analysis Report] Chapter 14

accident sequence of events, reactor protection criteria, and approved calculational methods. Based on this evaluation and initial plant design evaluations, FPC [Florida Power Corporation, the licensee for CR3] has determined that the probability and consequences of design basis transients and accidents are not significantly increased and that the radiological consequences from the design basis transients and accidents remain well below 10 CFR 100 limits.

FPC has also reviewed CR–3 balance of plant and safety related systems to determine which systems and components could be affected by the proposed power increase. The changes to the reactor coolant system and secondary conditions and parameters are discussed in this submittal. These changes are minor in nature. The only Technical Specification change is to revise the reference power to 2568 MWt. No facility modifications will be required. FPC evaluated the systems and components and concluded that these systems and components will continue to perform within their design parameters with the unit operating at 2568 MWt.

Based on the foregoing, the proposed amendment does not significantly increase the probability or consequences of an accident previously evaluated.

2. The proposed thermal power increase does not create the possibility of a new or different kind of accident from previously evaluated accidents. As noted above, the thermal-hydraulic and nuclear characteristics of the reactor core were originally designed for operation at the proposed thermal power. Therefore, operation at the proposed power level does not introduce new or different performance characteristics that create the possibility of a new or different kind of accident.

FPC has also reviewed CR–3 safety-related systems and balance of plant systems to determine which systems could be affected by the proposed power increase and the resultant minor changes in plant parameters and operating conditions. Systems that could be affected were evaluated using the licensing basis criteria described in the CR–3 FSAR to assure their adequacy at the increased power level. Included in these evaluations were plant features that are not power level related or directly affected by an increase in power level, as well as, associated issues such as environmental considerations. Equipment performance and plant operation were evaluated with respect to actual performance versus projected operating conditions to identify any hardware modifications required to achieve the upgraded power. Based on this evaluation, FPC has determined that all systems will continue to perform within their design parameters at 2568 MWt and that no physical modifications to these systems will be necessary to accommodate a 2568 MWt rating. Only minor re-calibration of plant instrumentation to reflect the increased power will be needed. The proposed power level does not introduce any new performance characteristics or modes of operation for plant systems and components, and does not introduce any new failure modes.

Based on the foregoing, the proposed amendment does not create the possibility of a new or different kind of accident.

3. The proposed amendment does not involve a significant reduction in a margin of safety. The thermal-hydraulic and nuclear characteristics of the reactor core were originally designed for operation at the proposed power level. Most of the design basis transients and accidents were originally analyzed assuming a power level of 2568 MWt or higher. As described more fully in this submittal, those transients and accidents that were not originally analyzed at 2568 MWt were re-evaluated using CR–3 FSAR Chapter 14 accident sequence of events, reactor protection criteria, and approved calculational methods. FPC has determined that operation with the proposed thermal power will be bounded by the original analyses. In addition, FPC's evaluation of affected plant systems and components revealed that plant systems and components will continue to operate within their design parameters with no significant change in a margin of safety.

Based on the foregoing, the proposed amendment does not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629

Attorney for licensee: A. H. Stephens, General Counsel, Florida Power Corporation, MAC–A5D, P. O. Box 14042, St. Petersburg, Florida 33733.

NRC Project Director: Mohan C. Thadani, (Acting).

Indiana Michigan Power Company

Docket Nos. 50–315 and 50–316

Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan.

Date of amendment request: August 3, 1994.

Description of amendment requests: The proposed amendments would allow the radiological effluent technical specifications (TS) to be relocated to other controlled documents. Procedural details contained in the current radiological effluents TS have been relocated to either the Offsite Dose Calculation Manual (OCDM) or the Process Control Program (PCP), as applicable. Proposed revisions to the OCDM and PCP have been prepared in accordance with the proposed changes to the administrative controls section of the TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1

The changes described above in no way negatively impact the requirements of the T/Ss. Separating the turbine room sump releases from the others is purely a clarification of the method we handle releases. The six ground monitoring wells added to the T/S table updates our current monitoring practice. With the six extra wells to monitor, we exceed the monitoring requirements of the T/Ss. Therefore, it is concluded that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2

No changes to the LCOs for either T/S are proposed as part of this amendment request. The proposed change does not involve any physical changes to the plant or any changes to plant operations. The changes merely propose to update our methods of implementing the T/S with our current practices. Thus, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3

The changes described above in no way negatively impact the requirements of the T/Ss. Separating the turbine room sump releases from the others is purely a clarification of the method we handle releases. The six ground monitoring wells added to the T/S table updates our current monitoring practice. With the extra wells to monitor, we exceed the monitoring requirements called for in

the T/Ss. Therefore, it is concluded that the proposed changes do not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: John N. Hannon.

Niagara Mohawk Power Corporation

Docket No. 50–410

Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York.

Date of amendment request: October 5, 1994.

Description of amendment request: The proposed license amendment would revise the applicability requirements of Technical Specification (TS) 3.7.3 to require operability of the Control Room Outdoor Air Special Filter Train System in Operational Conditions 1, 2, 3 and ** (when irradiated fuel is being handled in the reactor building and during CORE ALTERATIONS and operations with a potential for draining the reactor vessel and uncovering irradiated fuel) rather than in all Operational Conditions and * * *. The applicability requirements for Action Statement b of TS 3.7.3 and for the Radiation Monitoring Instrumentation required operable by TS Tables 3.3.7.1–1 and 4.3.7.1–1 would be changed in a similar manner. The proposed amendment would also add a notation to Action Statement b.1 of TS 3.7.3 stating that the provisions of Specification 3.0.4 are not applicable provided an operable control room filter train is in the emergency pressurization mode of operation. The licensee stated that these proposed changes are consistent with the requirements of the NRC's Improved Standard Technical Specifications (NUREG–1433) and with Generic Letter 87–09, "Section 3.0 and 4.0 of the Standard Technical Specifications (STS) on the Applicability of Limiting Conditions for Operation and Surveillance Requirements."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Control Room Outdoor Air Special Filter Train System is not an initiator or precursor to an accident. The Control Room Outdoor Air Special Filter Train System responds to a release of radioactivity to the outside environment as detected in the air supply to the control room by providing a radiologically controlled environment within the control room. In operational conditions 4 and 5, the probability and consequences of a design basis accident are reduced due to the pressure and temperature limitations in these operational conditions. Therefore, maintaining the chiller subsystem operable is not required in operational conditions 4 and 5, except for the * * * operational condition. Therefore, a change to applicability and action statements of LCO [Limiting Condition For Operation] 3.7.3 cannot affect the probability of a previously evaluated accident.

All accidents which take credit for operation of the Control Room Outdoor Air Special Filter Train System in the emergency pressurization mode of operation are analyzed and presented in Chapter 15 of the USAR [Updated Safety Analysis Report]. These accidents can only occur in operational conditions 1, 2, 3 and * * *.

Accordingly, the proposed change in the applicability of LCO 3.7.3 from all operational conditions (i.e., 1, 2, 3, 4, 5 and * * *) to operational conditions 1, 2, 3 and * * * does not significantly increase the consequences of an accident previously evaluated. The proposed change to action statement b of LCO 3.7.3 and to Tables 3.3.7.1–1 and 4.3.7.1–1 of LCO 3.3.7.1 is consistent with the above change.

Sections 15.7.4 and 15.7.5 of the USAR evaluate a fuel handling accident and a spent fuel cask drop accident, respectively. The radiological evaluation of these accidents considers the unfiltered radioactivity that enters the control room prior to the automatic operation of the Control Room Outdoor Special Filter Train System in the emergency pressurization mode of operation. The radiological consequences of these accidents are within the limits of GDC [General Design Criterion]–19.

With one control room filter train inoperable and prior to entering the operational condition, the proposed change to action statement b.1 of LCO 3.7.3 would require an operable control room filter train be placed in the emergency pressurization mode of operation. During an accident involving the release of radioactivity to the environment, an operable control room filter train would already be running in the emergency pressurization mode and performing its safety function, thereby preventing the entry of unfiltered radioactivity into the control room. Therefore, if a fuel handling accident or a spent fuel cask drop accident were to occur and release radioactivity, the control room personnel radiological doses would be less than the doses depicted in the USAR. Accordingly, the Technical Specification change to action statement b.1 does not significantly increase the consequences of a previously evaluated accident.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

This amendment does not involve any accident precursors or initiators. In addition, this amendment does not require any changes to plant equipment.

During an accident involving the release of radioactivity to the environment an operable control room filter train would already be running in the emergency pressurization mode and performing its safety function. Furthermore, the operating status of a running control room filter train would be unaffected by the receipt of an automatic start signal due to high radiation in either air intake to the Control Room Outdoor Air Special Filter Train System. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The proposed change in the applicability of LCO 3.7.3 from all operational conditions (i.e., 1, 2, 3, 4, 5 and * * *) to operational conditions 1, 2, 3 and * * * is consistent with the safety analysis contained in the USAR. The proposed changes to action statement b of LCO 3.7.3 and to Tables 3.3.7.1–1 and 4.3.7.1–1 of LCO 3.3.7.1 is consistent with the above change.

Entry into the ** operational condition for LCO 3.7.3 with one control room filter train inoperable and the other control room filter train

operable and operating in the emergency pressurization mode provides a comparable level of safety to two operable non-running control room filter trains. The remedial measure prescribed by Technical Specification action statement b.1 (placing an operable control room filter train in the emergency pressurization mode of operation) for which the exception to LCO 3.0.4 is proposed provides a sufficient level of protection to permit operational mode changes and safe long-term operation of NMP2 [Nine Mile Point Unit 2] consistent with the licensing basis described in the USAR. Therefore, the proposed change to action statement b.1 is consistent with Generic Letter 87–09, "Sections 3.0 and 4.0 of the Standard Technical Specifications (STS) on the Applicability of Limiting Conditions for Operation and Surveillance Requirements." Accordingly, this change will not significantly reduce the margin of safety.

This proposed amendment is consistent with the Improved Standard Technical Specifications, NUREG–1433. Accordingly, as determined by the analysis above, this proposed amendment involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Project Director: Ledyard B. Marsh.

Niagara Mohawk Power Corporation

Docket No. 50–410

Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York.

Date of amendment request: October 21, 1994.

Description of amendment request: The proposed amendment would add a footnote to Technical Specification (TS) 4.8.1.1.2.e.8 which would permit performance of the 24-hour functional test of the emergency diesel generators (EDGs) during power operation. TS 4.8.1.1.2.e.8 currently requires the 24-hour functional test of the EDGs be performed at least once per 18 months during shutdown; the proposed amendment would permit this testing to be performed during power operation provided the other two EDGs are operable. If either of the other two EDGs become inoperable, the test would be aborted.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to permit the 24 hour functional test of the diesels to be performed during power operation does not increase the chances for a previously analyzed accident to occur. The function of the diesels is to supply emergency power in the event of a loss of offsite power. Operation of the diesels is not a precursor to any accident. Furthermore, the diesel generator being tested will remain operable and will be available to supply emergency loads within the required time. In addition, the two remaining diesel generators will be operable during the test. Consequently, if an offsite disturbance were to occur that affected the operability of the diesel being tested, the two remaining diesels would be capable of feeding the loads necessary for safe shutdown of the plant. This addresses the concerns raised in Information Notice 84–69 regarding the operation of emergency diesel generators connected in parallel with offsite power. In summary, the proposed changes do not adversely affect the performance or the ability of the diesel generators to perform their intended function.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed amendment to the 24 hour functional surveillance test will not affect the operation of any safety system or alter its response to any previously analyzed accident. The diesel will automatically transfer from the test mode if necessary to supply emergency loads in the requried time. The test mode is used for the monthly surveillance of the diesel generators as well, therefore, no new plant operating modes are introduced. In the event the diesel fails the functional test it will be declared inoperable and the actions required for an inoperable diesel will be performed. The remaining two diesel generators will be operable and are capable of feeding the loads necessary for safe shutdown of the plant.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The proposed amendment will not reduce availability of the diesel generator being tested to provide emergency power in the event of a loss of offsite power. If a loss of offsite power or a loss of coolant accident occurs during the surveillance test, the emergency bus would de-energize and shed load. The diesel generator would then transfer from the test mode to the emergency mode. It would then be available to automatically supply emergency loads. In addition, the two remaining generators will be operable during the test. Consequently, if an offsite disturbance were to occur that affected the operability of the diesel begin tested, the two remaining diesels would be capable of feeding the loads necessary for safe shutdown of the plant. The time required for the diesel being tested to pick up emergency loads will not be affected by performing the 24 hour functional test during power operation.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Project Director: Ledyard B. Marsh.

Northeast Nuclear Energy Company et al.

Docket No. 50–336.

Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut.

Date of amendment request: October 18, 1994.

Description of amendment request: The proposed amendment would require three type A overall Integrated Containment Leakage Tests be conducted at approximately equal intervals during shutdowns during each 10-year service period. For the third Type A test for the second 10-year period, it would be conducted during the thirteenth refueling outage extending the second 10-year service period to the end of the thirteenth refueling outage. The amendment would also change the Containment Leakage Bases by reflecting the conditions of a proposed exemption to 10 CFR 50, Appendix J, that would remove the requirement that the third Type A test for each 10-year period be conducted when the plant is shutdown for the 10-year plant inservice inspection.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

* * * The proposed changes do not involve a SHC [significant hazards consideration] because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

Type A tests are performed to ensure that the total leakage from containment does not exceed the maximum allowable primary containment leakage rate at the design pressure. This ensures compliance with the dose limits of 10 CFR 100.

The proposal to revise Surveillance Requirement 4.6.1.2.a of the Millstone Unit No. 2 Technical Specifications will increase the flexibility for scheduling the Type A tests. It does not modify the maximum allowable leakage rate at the design containment pressure, does not impact the design basis of the containment, and does not make any physical or operational changes to existing plant structures, systems, or components.

The first two Type A tests of the second 10-year service period for Millstone Unit No. 2 have been conducted. The results of these tests demonstrate that Millstone Unit No. 2 has maintained control of containment integrity by maintaining margin between the acceptance criterion and the "As-Found" and "As-Left" leakage rates.

Historically, Type A tests have a relatively low failure rate where Type B and C testing (local leakage rate tests) could not detect the leakage path. Most Type A test failures are attributed to failures to Type B or C components (containment penetrations and isolation valves). Type B and C components are tested per Surveillance Requirement 4.6.1.2.d for the Millstone Unit No. 2 Technical Specifications. These tests are required to be conducted at intervals no greater than 24 months, and the acceptance criterion for the combined leakage rate for all penetrations and valves subject to the Type B and C tests is 0.6 L_a. These local leakage rate tests provide assurance that containment integrity is maintained. The relatively low "As-Left" Type B and C total leakage resulting from the past outage indicates that the leakage has been maintained within the technical specification acceptance criterion. The Type B and C tests will continue to be performed in accordance with the requirements of Surveillance Requirement 4.6.1.2.d. However, on September 26, 1994, NNECO submitted a request for a one-time technical specification change, request for enforcement discretion, and a request for a scheduler exemption from Appendix J to 10 CFR 50 regarding the Schedule for Type B and C testing. The NRC verbally granted enforcement discretion on September 24, 1994, and written enforcement discretion on September 30, 1994. The schedular exemption request was granted on October 12, 1994.

The previous Type A, B, and C tests demonstrate that Millstone Unit No. 2 has maintained control of containment integrity by maintaining a conservative margin between the acceptance criterion and the "As-Found" and "As-Left" leakage results. Based on this, the Millstone Unit No. 2 containment is considered to be in sound condition. No operations are known to have occurred which would suggest any substantial degradation of these results.

Based on the above, the proposal to revise Surveillance Requirement 4.6.1.2.a of the Millstone Unit No. 2 Technical Specifications does not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposal to revise Surveillance Requirement 4.6.1.2.a of the Millstone Unit No. 2 Technical Specifications will increase the flexibility in scheduling the Type A tests. It does not make any physical or operational changes to existing plant structures, systems, or components. In addition, the proposal does not modify the acceptance criterion for the Type A tests. Maintaining the leakage through the containment boundary to the atmosphere within a specific value ensures that the plant complies with the requirements of 10 CFR 100. The containment boundary serves as an accident mitigator; it is not an accident initiator. Therefore, the proposal to revise Surveillance Requirement 4.6.1.2.a does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in the margin of safety.

The proposal to revise Surveillance Requirement 4.6.1.2.a of the Millstone Unit No. 2 Technical Specifications will increase the flexibility for scheduling the Type A tests. It does not modify the maximum allowable leakage rate at the design containment pressure, does not impact the design basis of the containment, and does not make any physical or operational changes to existing plant structures, systems, or components.

The first two Type A tests of the second 10-year service period for Millstone Unit No. 2 have been conducted. The results of these tests demonstrate that Millstone Unit No. 2 has maintained control of containment integrity by maintaining margin between the acceptance criterion and the "As-Found" and "As-Left" leakage rates. Additionally, the results of the last Type B and C tests had significant margin with respect to the acceptance criterion. Based on the previous Type A, B, and C tests, the Millstone Unit No. 2 containment is considered to be in sound condition. No operations are known to have occurred which would suggest any substantial degradation of these results.

Based on the above, the proposal does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574

New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141–0270.

NRC Project Director: Phillip F. McKee.

Northeast Nuclear Energy Company, et al.

Docket No. 50–423

Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut.

Date of amendment request: September 30, 1994.

Description of amendment request: The licensee has proposed to revise the Technical Specifications (1) to clarify the definition of core alterations, (2) to change the verbiage in the Limiting Condition For Operation (LCO) addressing the refueling operations, (3) to make changes to three surveillance requirements involving source range instrumentation, and (4) to change the LCO regarding the Residual heat Removal and coolant circulation water levels to be consistent with the guidance provided in NUREG–1431.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve an SHC [significant hazards consideration] because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Boron Dilution in Mode 6—A boron dilution in Mode 6 is precluded by technical specification requirements to close and lock all dilution source valves. There is a provision for dilution valves to be opened under administrative controls; in this case, cautionary measures will be taken to control and monitor the reactivity addition. Deletion of the source range analog operational test prior to core alterations will not impact an accident previously evaluated since the sources range monitors are verified operable prior to entry into Mode 6 and every 7 days thereafter. The change in definition for a core alteration means that components which do not effect reactivity may be moved within the reactor vessel without any additional condition such as direct supervision of an SRO.

Since a boron dilution would not be initiated by movement of nonfuel components within the reactor vessel, it is not impacted by the change in definition of a core alteration.

Inadvertent Loading of a Fuel Assembly—Movement of a fuel assembly would be performed as a core alteration under the supervision of an SRO, therefore, it would not be impacted by the change to the definition of a core alteration. The change to the source range monitors also will not affect the probability of occurrence of a misloaded fuel assembly since this accident is precluded by administrative controls, as well as the source range monitors. Also, there will be no degradation in the reliability or accuracy of the source range monitors due to this change. The deletion of the requirement to perform the analog channel operational test within eight hours prior to core alterations will not impact performance of the monitors, since they have to be checked prior to entry into Mode 6 and every 7 days thereafter.

Fuel Handling Accident—Movement of fuel will not affect this accident, because it will still be considered a core alteration. Therefore, there is no effect on the probability of a fuel handling accident. The source range monitors are not involved in the occurrence of a fuel handling accident. The fuel handling accident is the only accident considered here with radiological consequences. It will not be impacted by the proposed changes.

Loss of RHR in Mode 6—The probability of this accident will not be changed since the new requirement is the same as before. As before, RHR may be secured for up to one hour per eight-hour period and boron dilution operations may not be performed with RHR secured (although this requirement is being added to the notes, the requirement is also given elsewhere in the technical specifications). Additionally, the existing reactor coolant system (RSC) temperature limits must still be met.

Based on the above, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

All required systems will continue to operate as before. Therefore, there is no possibility of a new or different kind of accident. The deletion of the source range analog channel operational test within eight hours prior to core alterations will not affect the performance of the monitors since they will have had this test completed prior to entry into Mode 6 and every 7 days thereafter. The change in definition of a core alteration cannot create the possibility of a new type of accident because those initiating events for accidents will remain classified as core alterations.

3. Involve a significant reduction in the margin of safety.

The margin of safety for the above listed accidents will remain as before.

a. Boron dilution in Mode 6—This accident calculates the time from receipt of a shutdown margin monitor dilution alarm until the core reaches criticality. Since this time is not changed, there is no reduction in the margin of safety. In this case, the dilution is precluded by administrative controls which will not be impacted by the proposed changes.

b. Inadvertent Loading of a Fuel Assembly—Technical Specification 3.9.1.1 protects against this accident by requiring sufficient boron in the RCS to prevent criticality for any core configuration including two stuck RCCAs [rod cluster control assemblies] in the fully withdrawn position. Since this requirement will not change, the margin of safety will not change.

c. Fuel Handling Accident—The margin of safety for the radiological limits is not changed.

d. Loss of RHR—Changes are editorial due to the revised definition of a core alteration. There is no change to the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Ms. L.M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141–0270.

NRC Project Director: Phillip F. McKee.

Northern States Power Company

Docket Nos. 50–282 and 50–306

Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota.

Date of amendment requests: October 3, 1994.

Description of amendment requests: The proposed amendment would revise

Prairie island Nuclear Generating Plant Technical Specification 4.6, "Periodic Testing of Emergency Power Systems." Specifically, the proposed amendment would modify the emergency diesel generator (EDG) 24-hour load test requirements to provide a indicated load range of 103–110% of the continuous rating. The proposed amendment would also rephrase various EDG test requirements to provide clarity and delete the requirement to verify that the auto-connected loads do not exceed 3000 kw (Unit 2 5100kw).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Changing the specification from "unit" to "diesel generator" does not change the intent of the specification, it merely clarifies the original intent and therefore cannot involve a change in the probability or consequences of an accident.

Changing the 22-hour lower range limit from a load of 90% to an indicated load of 92% removes possible ambiguity from the specification but does not change the actual requirement, therefore it cannot involve a change in the probability or consequences of an accident.

Removing the 22-hour upper range limit from the specification does not reduce the conservatism of the test since operating at a higher load provides more evidence of the ability of the machine to carry the accident loads. For this reason, this change will not involve any increase in the consequences of an accident. Also, increasing the load at which the diesel generator is tested cannot affect the probability of an accident.

The NRC staff has pointed out, in Generic Letter 88–15, the hazards of testing the Diesel Generator at a load greater than the design rating. The proposed change is intended to ensure that the design rating is not inadvertently exceeded. Since the recent installation of two additional emergency diesel generators, the highest anticipated event loads are: Unit 1–2414kW, Unit 2–3813 kW. For these diesel generators, then, 103% of the continuous ratings:

- Unit 1, 103% of 2750 kW (continuous rating) = 2832.5 kW represents 117.3% of the highest anticipated event load and;
- Unit 2, 103% of 5400 kW (continuous rating) = 5562 kW represents 145.9% of the highest anticipated event load.

A test load of 103%, therefore would still be significantly greater than the load required during accident conditions. Since an adequate level of electrical load carrying capacity of the diesel generators (and thus their accident mitigating functions) would still be demonstrated by the surveillance test, the consequences of an accident would be unaffected by the proposed change. The probability of occurrence of a previously evaluated accident would be unaffected since testing a diesel generator at load between 103 and 110 percent instead of at load between 105 and 110 percent could not cause or contribute to the initiation of an accident. For these reasons, this change could have no effect on the probability or consequences of an accident previously evaluated.

Allowing momentary transients outside of the test band does not affect the conduct of the test, it merely allows momentary swing outside the specified band to not invalidate the test. Not allowing momentary transients would not prevent them, it would only require conducting the test longer until the specified time period was achieved without moving outside the band. Since the machine will not be operated any differently, this specification change cannot affect the probability or consequences of an accident previously evaluated.

Proposed changes A, B, C, D, and the first part of E [identified as such in the submittal] are intended to clarify the meaning of the existing specifications without changing the requirements. For this reason, these proposed changes to the Technical Specifications will not change the manner in which the plant is operated or maintained. These administrative changes, therefore, will effect on the probability or consequences of an accident previously evaluated.

The second part of E (verification of the bypass of diesel generator trips during a simulated safety injection signal vs concurrent safety injection and loss of offsite power signals) does not change the intended function which is to be tested but, rather, reduces the special conditions (temporary electrical jumpers to simulate the loss of offsite power) in which the plant needs to be placed in order to perform the test.

Proposed change F (removal of the verification that the auto-connected load do not exceed 3000 or 5100 kW) does not reduce the assurance of the ability of the diesel generators to perform the accident mitigation functions since this verification is performed by other, more pertinent, means.

Therefore, these changes cannot increase the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different king of accident from any accident previously analyzed.

Changing the specification from "unit" to "diesel generator" does not change the intent of the specification, it merely clarifies the original intent and therefore cannot create the possibility of a new or different kind of accident.

Changing the 22-hour lower range limit from a load of 90% to an indicated load of 92% removes possible ambiguity from the specification but does not change the actual requirement.

Removing the 22-hour upper range limit from the specification does not change the manner in which the surveillance is performed. It only affects whether the time spent above 100% load can be counted toward 22 hours in the 22-hour portion of the test. This change would not allow any new modes of operation nor does it allow any modification to the plant.

As stated above, testing a diesel generator at a load between 103 and 110% instead of between 105 and 110% could not cause or contribute to the initiation of an accident.

Allowing momentary transients outside of the test band does not affect the conduct of the test, it merely allows momentary swings outside the specified band to not invalidate the test. Not allowing momentary transients would not prevent them, it would only require conducting the test longer until the specific time period was achieved without moving outside the band.

Therefore, for these reasons, operation of the facility in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

As stated above [for changes A–F], the proposed changes will not cause a change in the way in which the plant is operated or maintained, excepted for the reduction of the special conditions in which the plant needs to be placed in order to test the bypass of the diesel generator trips. Therefore, these administrative changes will not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. The proposed amendment will not involve a significant reduction in a margin of safety.

Changing the specification from "unit" to "diesel generator" does not

change the intent of the specification, it merely clarifies the original intent and therefore cannot affect the margin of safety.

Changing the 22-hour lower range limit from a load of 90% to an indicated load of 92% removes possible ambiguity from the specification but does not change the actual requirement and therefore cannot affect the margin of safety.

The margin of safety is not affected by removal of the 22-hour upper range limit on the operation of the diesel generators during surveillance testing since the margin of safety is related to the magnitude of the accident loads and the maximum capacity of the machine to carry load and this margin would be unaffected by this change.

The capacity of each diesel generator to carry electrical load can not be diminished by being tested at a lower load. Also, load testing to less than 105% but more than 103% does not lessen the confidence in the ability of the diesel generators to carry adequate load for this facility since these diesel generators have significantly greater load capacity than required by Standard Review Plan guidance in this regard (the guidance allows peak accident load up to 100% of the continuous rating versus Unit 1 diesel generators peak accident load of 87.8% and Unit 2 diesel generators peak accident load of 70.6%). Therefore, this change will not involve a significant reduction in the margin of safety.

Allowing momentary transients outside of the test band does not affect the conduct of the test, it merely allows momentary swings outside the specified band to not invalidate the test. Not allowing momentary transients would not prevent them, it would only require conducting the test longer until the specified time period was achieved without moving outside the band. Since the machine will not be operated any differently per the new specification, the margin of safety is unaffected.

As stated above [for changes A–F], the proposed changes will not cause a change in the way in which the plant is operated or maintained, except for the reduction of the special conditions in which the plant needs to be placed in order to test the bypass of the diesel generator trips. Therefore, these administrative change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet mall, Minneapolis, Minnesota 55401.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: John N. Hannon.

Omaha Public Power District

Docket No. 50–285

Fort Calhoun Station, Unit No. 1, Washington County, Nebraska.

Date of amendment request: October 7, 1994.

Description of amendment request: The proposed amendment to the Technical Specifications (TSs) would (1) delete the surveillance requirements contained in TS 3.6(3)a for the raw water backup valves to the containment cooling coils, (2) delete the surveillance requirements contained in TS 3.2, Table 3–5, item 6, for raw water valves, and (3) revise the basis of TS 2.4 to reflect these changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The deletion of surveillance requirements contained in Technical Specifications (TS) 3.2, Table 3–5, Items 6 and 3.6(3)a does not involve a significant increase in the probability or consequences of an accident previously evaluated.

TS 3.6(3)a requires the Raw Water (RW) backup valves to the containment air coolers to be tested each refueling outage. In 1990, during the process of reviewing several open items created by the design basis reconstitution project, an engineering analysis determined that RW direct cooling of the containment air cooling coils should not be used after an accident that has created elevated temperature conditions inside containment. The high containment air temperatures, in conjunction with the low back pressure in the containment cooling coils when in the RW direct cooling mode, introduces the possibility of vaporization inside the coils. Therefore, the use of RW direct cooling for the containment air coolers has been discontinued in post-Loss of Coolant Accident (LOCA) or post-Main Steam Line Break (MSLB) situations. The issue of not being able to utilize RW direct cooling to the containment air cooling coils was reported to the NRC in LER–90–25, dated October 29, 1990 and LER–90–25 Revision 1, dated December 17, 1990.

Raw water direct cooling of the containment air coolers is possible if the containment atmospheric temperatures are less that 150°F. If RW direct cooling of the containment air coolers was utilized after a LOCA or MSLB accident, it could only be used for long-term containment atmospheric cooling. These conditions are essentially equivalent to that associated with conditions in containment during normal plant operation. RW direct cooling of the containment air coolers is not a required post-accident function to maintain containment pressure below 60 psig. Since these valves are not required to perform a post-accident function, deletion of the requirements to test these valves does not involve a significant increase in the probability or consequences of an accident previously evaluated.

TS 3.2, Table 3–5, Item 6 requires that valves in the RW system be tested every refueling outage. The valves tested by this surveillance that could perform a safety function are already tested in accordance with TS 3.3(1). Therefore testing of these valves under TS 3.2, Table 3–5, Item 6 is redundant to TS 3.3(1)a.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

There will be no physical alterations to the plant configuration, changes to setpoint values, or changes to the implementation of setpoints or limits as a result of this proposed change. Valves that are required to be repositioned during an accident to mitigate the consequences will still be tested on a refueling frequency. The proposed change only deletes unnecessary or redundant testing requirements from the TS. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously analyzed.

(3) The proposed changes do not involve a significant reduction in a margin of safety.

The proposed changes delete unnecessary or redundant surveillance requirements within the TS. The deletion of TS 3.2, Table 3–5 Item 6, only deletes testing requirements that are already required to be conducted by TS 3.3(1)a. The deletion of the requirement to test the RW backup

valves to the containment air coolers in TS 3.6(3) only deletes an unnecessary surveillance. RW direct cooling of the containment air coolers is not required to maintain containment pressure below the design limit of 60 psig. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1875 Connecticut Avenue, N.W., Washington, D.C. 20009–5728.

NRC Project Director: Theodore R. Quay.

Pennsylvania Power and Light Company

Docket Nos. 50–387 and 50–388

Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania.

Date of amendment request September 26, 1994.

Description of amendment request: The amendment would remove the requirement for operability of the Average Power Range Monitors (APRMs) while the plant is in Operational Condition 5. However, the requirement for the APRMs to be operable during a shutdown margin demonstration, when the mode switch is in Startup, will remain unchanged.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards construction, which is presented below:

I. This proposal does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Not requiring APRMs to be OPERABLE in OPCON 5 will not increase the probability of inadvertent reactor critically during refueling operations. Refueling Interlocks, NMS [Neutron Monitoring System] (SRMs [Source Range Monitor], IRMs [Intermediate Range Monitor]), and procedural restrictions provide assurance that inadvertent criticality does not occur due to the simultaneous withdrawal or removal of two control rods or due to the inadvertent insertion of a fuel bundle into a core location with a control blade removed.

The FSAR [Final Safety Analysis Report] Section 15.4.1 discusses the potential for a control rod withdrawal error during refueling and start-up operations. The discussion concludes that the withdrawal of one control rod does not require a safety action because the total worth of one control rod is not sufficient to cause criticality. The attempted withdrawal of two control rods, assuming an operator error and a single active failure, would result in a control rod block initiated by the Refueling Interlocks. The safety-related IRM subsystem, which is required by Technical Specifications to be OPERABLE while in OPCON 5, is designed to generate a rod block or reactor scram on high neutron flux and is therefore a backup protective system for the Refueling Interlocks during refueling.

The Safety-related IRM subsystem of the NMS is required by Technical Specifications to be OPERABLE during OPCON 5 to support the safety design bases of the NMS and RPS [Reactor Protection System]. The SRM is not a safety-related subsystem but is important to plant safety and is required by Technical Specifications to be OPERABLE in OPCON 5. The SRM subsystem provides the plant operator with neutron flux levels from startup conditions to the IRM operating range. The SRMs and IRMs are designed to respond to local core conditions and would indicate and respond (control rod block or scram) to an accident condition to mitigate the transient. Thus, the APRMS are not necessary to be OPERATOR in OPCON 5. The proposed Technical Specification change will not alter the current requirements that the APRMs be OPERABLE during shutdown margin demonstrations in OPCON 5 when the mode switch is in Startup.

The proposed Technical Specification change would reduce the APRM operability requirement in OPCON 5 and would not affect the FSAR evaluation of the inadvertent criticality due to the withdrawal or removal of the highest worth control rod or due to the insertion of fuel bundles in uncontrolled cells. The FSAR concludes that the Refueling Interlocks and plant procedures provide assurance that inadvertent criticality does not occur during refueling.

The consequences of an accident will not be increased by the proposed Technical Specification change because of the existing lines of defense which prevent an inadvertent criticality event during refueling, e.g., administrative restrictions, refueling procedures, licensed plant operators, SRMs, Refueling Interlocks, and IRMs. Furthermore, should the number of operator IRM or SRM channels be less than that required by Technical Specifications, the Technical Specifications require that core alteration activities be suspended and all insertable control rods be inserted into the core.

Therefore, the proposed changes do not result in an increase in the probability or consequences of an accident previously evaluated.

II. This proposal does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the Technical Specifications will remove the APRM operability requirement while in OPCON 5 (except for shutdown margin demonstration testing); however, the SRMs and IRMs will still be required to be OPERABLE in OPCON 5.

The IRMs are safety-related and are designed to detect and respond to increases in neutron flux within the local core regions. Any inadvertent increases in neutron flux during refueling would originate at a local core location, i.e., rod withdrawal error or fuel bundle insertion. Technical Specifications require IRM operability and will generate an RPS scram or control rod block if neutron flux increased to the setpoint. Therefore, removing the APRMs operability requirement in OPCON 5 would not effect any safety related equipment or equipment important to safety.

The APRMs provide core power information to the control room operator and also provide trip signals to the RMCS [Reactor Manual Control System] and RPS as required. The absence of an APRMs input signal will not affect these systems during refueling operations.

Removing the APRMs operability in OPCON 5 will not affect the response of safety-related equipment as previously evaluated in the FSAR. The proposed changes to the Technical Specifications do not affect any safety-related equipment or equipment important to safety.

The proposed changes to the Technical Specifications would remove the APRMs operability requirement during refueling operations. Technical Specifications require IRM operability and will generate an RPS scram or control rod block if neutron flux increased to the applicable setpoint.

No new types of accidents would be introduced since the SRMs and IRMs are available and required to be OPERABLE in OPCON 5. Both SRMs and IRMs would indicate and provide a

control rod block or scram signal, as appropriate, to an increase in neutron flux to mitigate a transient event. Furthermore, should the number of OPERABLE IRM or SRM channels be less than that required by Technical Specifications, the Technical Specifications require that core alteration activities be suspended and all insertable control rods be inserted into the core.

Therefore, the proposed Technical Specification changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

III. This change does not involve a significant reduction in a margin of safety.

For the reasons discussed in items 1 and 2 above and because the Technical Specification Bases do not discuss or require APRMs operability during OPCON 5, Refueling, the proposed Technical Specification changes do not involve a significant reduction in a margin of safety.

The NRS staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration. *Local Public Document Room location:* Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701 *Attorney for licensee:* Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

NRC Project Director: John F. Stolz.

Philadephia Electric Company

Docket Nos. 50–352 and 50–353

Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania.

Date of amendment request: August 22, 1994.

Description of amendment request: The amendment consists of five (5) sections of Technical Specifications changes which reflect the Improved Standard Technical Specifications (NUREG–1433):

Section 1: Control Rod Block Instrumentation,
Section 2: Standby Liquid Control System Operability in Mode 5,
Section 3: Scram Discharge Volume Valve Testing,
Section 4: Optional Method of Scram Timing, and
Section 5: Definition of Core Alteration.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Section 1: Control Rod Block Instrumentation

1. The proposed Technical Specifications (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes can be divided into two general categories, the deletion of the "S/U" requirements, and the change in frequency of the SRM [Source Range Monitor] and IRM [Intermediate Range Monitor] Calibration and Functional Tests. In each case in which the "S/U" requirement has been deleted, the normal surveillance frequency specified for the required Operating Condition remains. The equipment's associated probability of failure remains unchanged. In the case of the surveillance frequency changes proposed for the SRMs and IRMs, the probability of an accident evaluated in the SAR [Safety Analysis Report] occurring does not increase since there is no credit taken in the SAR for those Control Rod Block functions with respect to an accident. As such, the proposed changes will not result in an increase in the probability of occurrence of an accident previously evaluated in the SAR. The proposed TS changes do not alter the method of operation or performance of the equipment in carrying out associated Control Rock Block functions. Thus, the consequences of an accident previously evaluated in the SAR are not increased.

Therefore, the proposed TS changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes do not alter the configuration of the plant or the way that the plant is operated. The equipment can perform no other function than it is presently capable of, or cause or permit any other accident than is now possible. Thus, the possibility of an accident of a different type than previously evaluated in the SAR cannot be created.

Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

Since the proposed TS changes affect only the surveillance frequency intervals and do not change the plant configuration or associated instrument setpoints, there is no quantitative or qualitative reduction in the margin of safety. Thus, the margin of safety as defined in the bases of any Technical Specification is not reduced.

Therefore, the proposed TS changes do not involve a reduction in a margin of safety.

Section 2: Standby Liquid Control System Operability in Mode 5

1. The proposed Technical Specifications (TS) change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change will remove the SLCS operability requirement in OPCON 5. The purpose of the SLCS is to bring the reactor to and maintain it in a cold shutdown condition from normal power operations following failure to scram during power operations. Initiation of the SLCS is not a precursor to any accident. Therefore, inoperability of the SLCS in OPCON 5 cannot increase the probability of an accident previously evaluated.

The proposed TS change does not involve a physical change in any system's configuration and no new modes of operation are introduced. The SLCS has not analyzed function OPCON 5. The probability of fuel failure will not be increased by this change. Shutdown margin, in conjunction with TS requirements and procedural controls, will assure that an inadvertent criticality event will not occur during refueling. In addition, the Reactor Protection System (RPS) and Control Rod System will provide protection in the unlikely event that an inadvertent criticality should occur.

Therefore, the proposed TS change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes does not involve a physical change in any system's configuration and no new modes of operation are introduced. The SLCS's only purpose is to mitigate the consequences of a failure to scram during power operation. In OPCON 5, the SLCS has no analyzed function, therefore, the proposed TS change will not create the possibility of a new or

different kind of accident from any previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

The purpose of the SLCS is to bring the reactor to and maintain it in a cold shutdown condition from normal power operations following a failure to scram during power operations. The SLCS is not designed to terminate an inadvertent criticality during OPCON 5. Shutdown margin, either demonstrated or analytically determined, in conjunction with Technical Specifications and procedural controls, will assure that an inadvertent criticality event will not occur during refueling operations. In addition, the RPS and Control Rod System, which are extremely reliable, will provide protection in the unlikely event that an inadvertent criticality does occur. Therefore, the proposed TS change does not involve a reduction in a margin of safety.

Section 3: Scram Discharge Volume Valve Testing

1. The proposed Technical Specifications (TS) change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Scram Discharge Volume (SDV) is not an accident initiator. Deletion of the requirement that the SDV be determined OPERABLE by testing the SDV vent and drain valves when control rods are scram tested from a normal control and configuration of less than or equal to 50% rod density at least once per 24 months, as proposed, will have no effect on the probability or consequences of an accident previously evaluated.

This proposed TS will have a negligible impact on the conditions experienced by the vent and drain valves as they stroke closed, since the SDV is initially vented to the atmosphere, and the valves close before the SDV becomes pressurized, even during a scram at full reactor power. Reactor pressure and Control Rod Drive (CRD) discharge flow conditions do not influence the SDV vent and drain closure rates, since the SDV is of sufficient volume and initially vented such that peak pressure prior to the SDV complete isolation will not be substantial. In addition, lower coolant temperatures expected during testing at shutdown conditions will also have a negligible impact on the performance of the test. Although, there could be some variation in the performance [of] the SDV vent and drain valves to re-open when performing the test during shutdown conditions, as opposed to conducting the test during power operation, the ability of the valves to re-open is demonstrated after each reactor scram during power operation.

In the event and SDV vent or drain valve failed to open, increasing SDV level during reactor operation would cause 1) an alarm in the Main Control Room (MCR), 2) a control rod block, and finally a reactor scram initiated by the Reactor Protection System (RPS) if action is not taken to drain the SDV. Therefore, the ability to shut down the reactor is not impaired. If a SDV vent or drain valve fails to close, the redundant valve's closure would provide the required function. If both valves failed to close, a loss of reactor coolant in the form of water discharged from the CRD system would occur. The amount of water discharged will be relatively small, and is more of a concern from the standpoint of contamination to the Secondary Containment rather than a loss of reactor water inventory. A structural failure of the SDV, which bounds this case of an open SDV vent or drain line, has been previously evaluated in NUREG–0808, "Generic Safety Evaluation Report Regarding Integrity of BWR Scram System Piping." In this evaluation, the NRC concluded that, for a bounding leakage case corresponding to a rupture of the SDV, the offsite doses would be well within the limits of 10CF100, and that adequate core cooling would be maintained.

Deletion of the requirement that the SDV be determined OPERABLE by testing the SDV vent and drain valves, as proposed in this TS Change Request, will have an insignificant effect on the probability of occurrence of malfunction of any plant equipment. The conditions in the SDV at the time of vent and drain valve closure are not appreciably different whether a scram is initiated from power operation or during shutdown conditions. In addition, this proposed TS change eliminates the potential need for an additional startup and shutdown cycle, along with the associated challenges to all systems and components, that would be required to satisfy the current TS requirements in the event a unit were to trip off-line shortly before a planned outage when the surveillance was scheduled to be performed. Furthermore, this proposed TS changes does not affect the testing frequency for the valves.

This proposed TS change will not result in appreciably different conditions experienced by the valves as they close, and their ability to re-open is confirmed following each reactor scram from power conditions. The consequences resulting from a failed closed or failed open SDV vent or drain line have been evaluated and determined not to result in offsite doses that would exceed the limits specified in 10CFR100, or jeopardize adequate reactor core cooling capability. Therefore, the consequences of a malfunction of equipment important to safety previously evaluated is not increased.

Therefore, the proposed TS change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The SDV is not an accident initiator. Deletion of the requirement that the SDV be determined OPERABLE by testing the SDV vent and drain valves from a configuration of less than or equal to 50% rod density, as proposed, will not create the possibility of a different type [of] accident than any previously evaluated.

No plant equipment is added or deleted as a result of this proposed change. Since the initial conditions of pressure, temperature, and CRD system discharge flowrate have no appreciable effect on the SDV vent and drain valve performance, no different type of malfunction of any equipment important to safety is created.

Therefore, the proposed TS change does not create the possibility of a new different kind of accident from any previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

Since the initial test conditions of pressure, temperature, and CRD discharge flowrate will have no appreciable effect on the SDV vent and drain valve performance, conducting the surveillance test during shutdown conditions, as specified in this proposed TS change, will not affect the validity of the surveillance results with respect to the operability of the SDV to perform its intended safety function. Furthermore, every reactor scram is a serious plant transient and a potential challenge to safety-related systems and equipment. The potential decrease in future scrams which could result from this proposed TS change will represent an improvement in overall safety.

Therefore, the proposed TS change does not involve a reduction in a margin of safety.

Section 4: Optional Method of Scram Timing

1. The proposed Technical Specification (TS) changes involves a significant increase in the probability or

consequences of an accident previously evaluated.

Scram testing control rods at zero reactor coolant pressure will not increase the probability of any control rod related transient or accident discussed in the UFSAR [Updated Final Safety Analysis Report]. UFSAR Sections 15.4.1.1 and 15.4.1.2 discuss the consequences of inadvertent reactivity insertion errors due to the withdrawal of one or more control rods. The probability of one of these events occurring is a function of operator error and equipment malfunction and is not related to scram insertion times.

An inadvertent reactivity insertion error is prevented by existing system hardware interlocks and procedural controls that are not affected by scram time testing, e.g., core design, control and design, one-rod-out interlocks, refueling interlocks, control rod sequence designations, and neutron monitoring systems.

USFAR Section 15.4.9 discusses the control rod drop accident (CRDA). The CRDA assumes that a control rod suddenly drops out of the core due to equipment malfunction. The probability of occurrence of this accident is based on an equipment malfunction and is not affected by scram testing.

Engineering analysis and control rod scram test data demonstrate that a control rod drive that will meet the 2.0 second, scram insertion time, test criteria at zero reactor coolant pressure will also meet all scram insertion criteria during reactor startup and up to 40% rated thermal power.

The 2.0 second criterion was chosen to conservatively envelop scram time criteria and reactivity insertion criteria during reactor startup and up to 40% rated power conditions. Therefore, scram testing affected control rods at zero reactor pressure will not increase the consequences of an accident previously evaluated.

UFSAR Sections 15.4.1.1 and 15.4.1.2 evaluate reactivity insertion transients at low power conditions due to inadvertent control rod withdrawal errors. The UFSAR concludes that rod withdrawal errors at low power are adequately precluded by refueling interlocks, rod worth minimizer, operating procedures, core design, and control rod hardware design. However, should operator errors followed by equipment malfunctions result in an inadvertent criticality event, the IRMs would provide the necessary rod blocks or reactor scram to preclude the operational transient. Scram insertion time limits for the continuous rod withdrawal error during startup is 5.0 seconds. This scram time criterion will be met by a control rod that scrams within 2.0 seconds at zero reactor pressure. The 2.0 second scram criterion was established to ensure that affected control rods will meet scram requirements from zero reactor pressure up to 40% core thermal power.

Also, during low power operation (UFSAR Subsection 15.4.1.2) the rod worth minimizer (RWM) prevents the operator from selecting and withdrawing an out-of-sequence control rod. During reactor operation in the power range (UFSAR subsection 15.4.2) the rod block monitor (RBM) prevents a rod withdrawal error by inhibiting inadvertent control rod withdrawal. The RWM and RBM do not rely on a scram function to mitigation the consequences of a rod withdrawal error, and therefore the consequences of an accident evaluated in the UFSAR will not be affected by the proposed changes to the Technical Specifications.

The consequences of a control rod drop accident (UFSAR Section 15.4.9) would not be affected by scram testing a control rod at zero reactor pressure. The design basis accident of the rod drop accident assumes that control rods scram within 5.0 seconds. This 5.0 second scram test requirement will be met by control rods that meet the 2.0 second criterion at zero reactor pressure.

Therefore, the proposed TS changes do not involve an increase in he probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes to the Technical Specifications will allow control rods to be scram tested at zero reactor pressure and then again at rated reactor pressure prior to achieving 40% rated reactor power. No new types of accidents will be introduced since control rods that meet the 2.0 second scram criterion at zero reactor pressure will also meet all scram test criteria during reactor startup and at rated reactor pressure.

Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The basis for shutdown margin (TS Bases 3/4.1.1) states that the reactor shall be made subcritical by all certain margin in all operating and shutdown conditions. The proposed changes to the Technical Specifications will not affect the shutdown margin requirements. Adequate shutdown margin is assured by core design, the one-rod-out interlock, and administrative controls.

The basis for the control rod insertion times (TS Bases 3/4.1.3) states that the scram times are to be consistent with those used in the transient and accident analysis. The proposed Technical Specifications changes will add an additional scram test verification for affected control rods at zero reactor pressure. The zero reactor pressure scram limit (2.0 seconds) was designed to ensure that the scram times assumed in the transient analysis will remain bounding from zero reactor pressure up to 40% rated core thermal power.

The basis for the control rod drop accident (TS Bases 3/4.1.3) states that the potential effects of a CRDA are limited. The proposed Technical Specifications changes will not effect the control rod drop results as the changes do not affect the reactivity of the rod or the rod drop velocity. The CRDA analysis is based on a 5.0 second scram insertion time criterion. The 2.0 second time criterion was established to ensure that the 5.0 second scram time criterion was valid from zero reactor pressure to 950 psig reactor pressure.

The basis for MCPR limits (TS Bases 3/4.1.3 and 2.3) states the CRD system must bring the reactor subsubcritical at a rate fast enough to prevent MCPR from becoming less than the fuel cladding safety limit during the limiting power transient analyzed in the UFSAR. The proposed changes to the Technical Specifications will not affect the scram insertion rates that are used as input to the transient analysis. The zero reactor pressure scram limit of 2.0 seconds was developed to ensure that the control rods would meet their design scram insertion times from zero reactor pressure up to 40% rated power.

The proposed changes to the Technical Specifications will not increase the probability of inadvertent criticality because the changes do not affect the reactivity worth of control rods.

Therefore, the proposed TS changes do not involve a reduction in a margin of safety.

Section 5: Definition of Core Alteration

1. The proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed definition change removes the requirement to have a SRO or LSRO supervise control rod withdrawal in an off-loaded cell (i.e. no fuel assemblies). The evaluated accident potentially affected by this change is a control rod movement error during refueling resulting in inadvertent

criticality. The supervision by a SRO or LSRO does not solely preclude inadvertent criticality and was not relied upon in the accident analysis contained in Section 15.4 of the LGS Updated Final Safety Analysis Report (UFSAR). The LGS reactor core is designed to have adequate shutdown margin with the highest-reactivity-worth control rod withdrawn. The withdrawal of a second rod with fuel assemblies loaded in the associated cell is prevented by a combination of the refueling, one-rod-out interlock, and the Limiting Conditions for Operation (LCO) requirement of TS 3.9.10.2. The LCO requirements ensure adequate shutdown margin is present prior to control rod withdrawal. This is accomplished by testing during startup following a refueling outage or by analytical calculations during refueling. The refueling interlock will provide a rod block upon an attempt to withdraw a second control rod and is required to be operable in accordance with TS 3.9.10.2 except for rods which have no fuel assemblies in the associated cell. The removal of the fuel assemblies from a cell eliminates the need for the reactivity control function of the associated rod. The physical removal of a control blade from the core by means of the refueling floor, first requires the removal of the four associated fuel assemblies in the cell. This design inherently prevents inadvertent criticality. Finally, this change is consistent with NUREG–1433 "Standard Technical Specifications." Since current analysis permits the withdrawal of a control rod blade, provided the associated cell is unloaded, and refueling mode interlocks, administrative TS requirements and the physical design of the control blade and fuel cell, which preclude inadvertent criticality, will remain unchanged, this proposed change to the TS definition of CORE ALTERATION will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The LGS UFSAR currently permits control rod withdrawal and or removal, provided there are no fuel assemblies in the associated fuel cell. The definition change removes the requirement to have a SRO or LSRO supervise rod withdrawal in an off-loaded cell. The change potentially [a]ffects a control rod movement error during refueling resulting in inadvertent criticality which has been previously evaluated. In addition, the proposed change will make no physical changes to equipment or remove administrative controls which solely preclude inadvertent criticality. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

The LGS TS bases address reactivity concerns, radiological releases, control rods, and monitoring of the facility related to this change. With the four fuel assemblies removed from a cell, the control rod/blade in the associated cell has no reactivity function. The reactivity issues addressed by TS are therefore unaffected. The rod/blade coupling integrity is maintained by the requirement to perform a coupling check following maintenance. Section 15.4 of the UFSAR states that there are no radiological releases in association with a rod withdrawal error during refueling. This conclusion is maintained by the administrative requirements of TS 3.9.10.2, the refueling interlocks for one-rod-out, and the physical design of the blade and cell. Lastly, the TS requirements for Emergency Core Cooling, Plant System, Containment, and Electrical Power Distribution System, which provide the systems necessary to mitigate the effects of a radiological release during control rod movement in an unloaded cell were reviewed and were found not to be adversely [a]ffected by the proposed change. Therefore, this change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J.W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101.

NRC Project Director: John F. Stolz.

Philadelphia Electric Company

Docket Nos. 50–352 and 50–353

Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania.

Date of amendment request: August 31, 1994.

Description of amendment request: The proposed amendments, which are consistent with the Improved Standard Technical Specifications (NUREG–1433), involve the following six (6) sections of TS changes:

Section 1: Relocation of Turbine Overspeed Protection System Requirements;
Section 2: Relocation of Primary Containment Conductor Protection Devices Requirements;
Section 3: Feedwater/Main Turbine Trip System Actuation Instrumentation Requirements;
Section 4: Permit Operability of Low Pressure Coolant Injection While Aligned to Shutdown Cooling;
Section 5: Remove Temperature Requirement for Operational Condition [OPCON] 5; and
Section 6: Reduce Frequency of Alternate Decay Heat Demonstration

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Section 1: Relocation of Turbine Overspeed Protection System Requirements

1. The proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change relocates requirements from the TS, to licensee controlled documents. The licensee controlled documents containing the relocated requirements will be maintained using the provisions of 10 CFR 50.59 and are subject to the change control process in the Administrative Controls Section 6.0 of the TS. Since changes to licensee controlled documents will be evaluated per 10 CFR 50.59, no increase (significant or insignificant) in the probability or consequences of an accident previously evaluated will be allowed. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident previously evaluated.

This change relocates requirements to licensee controlled documents. This change will not alter the plant configuration (no new or different type of equipment will be installed) or make changes in methods governing normal plant operation. This change will not

impose different requirements and adequate control of information will be maintained. This change will not alter assumptions made in the safety analysis and licensing basis. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

This change relocates requirements from the TS to licensee controlled documents. This change will not reduce a margin of safety since it has no impact on any safety analysis assumptions. In addition, the requirements to be transferred from the TS to licensee controlled documents are the same as the existing Technical Specifications. Since any future changes to these licensee controlled documents will be evaluated per the requirements of 10 CFR 50.59, no reduction (significant or insignificant) in [a] margin of safety will be allowed. Therefore, this change will not involve a significant reduction in a margin of safety.

The existing requirements for NRC review and approval of revisions, in accordance with 10 CFR 50.59, to these details and requirements proposed for relocation, does not have a specific margin of safety upon which to evaluate. However, since the proposed change is inconsistent with the BWR [boiling-water reactor] Improved Standard Technical Specifications (NUREG–1433 approved by the NRC Staff) and the change controls for proposed relocated details and requirements provide an equivalent level of regulatory authority, revising the TS to reflect the approved level of detail and requirements ensures no reduction to the margin of safety.

Section 2: Relocation of Primary Containment Conductor Protection Devices Requirements

1. The proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposed change relocates requirements from the TS to licensee controlled documents. The licensee controlled documents containing the relocated requirements will be maintained using the provisions of 10 CFR 50.59 and are subject to the change control process in the Administrative Controls Section 6.0 of the TS. Since changes to these licensee controlled documents will be evaluated per 10 CFR 50.59, no increase (significant or insignificant) in the probability or consequences of an accident previously evaluated will be allowed. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This change relocates requirements to licensee controlled documents. This change will not alter the plant configuration (no new or different type of equipment will be installed) or make changes in methods governing plant operation. This change will not impose different requirements and adequate control of information will be maintained. This change will not alter assumptions made in the safety analysis and licensing basis. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

This change relocates requirements from the TS to licensee controlled documents. This change will not reduce a margin of safety since it has no impact on any safety analysis assumptions. In addition, the requirements to be transferred from the TS to the licensee controlled documents are the same as the existing TS. Since any future changes to these licensee controlled documents will be evaluated per the requirements of 10 CFR 50.59, no reduction (significant or insignificant) in [a] margin of safety will be allowed. Therefore, this change will not involve a significant reduction in a margin of safety.

The existing requirements for NRC review and approval of revisions, in accordance with 10 CFR 50.59, to these details and requirements proposed for relocation, does not have a specific margin of safety upon which to evaluate. However, since the proposed change is consistent with the BWR Improved Standard TS (NUREG–1433 approved by the NRC Staff) and the change controls for proposed relocated details and requirements provide an equivalent level of regulatory authority, revising the TS to reflect the approved level of detail and requirements ensures no reduction to the margin of safety.

Section 3: Feedwater/Main Turbine Trip System Actuation Instrumentation Requirements

1. The proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

For the proposed TS change, in the event of a Reactor Vessel Water Level—High Level 8 transient, operator action per existing plant procedures would terminate the event and prevent damage to the Main/RFP [reactor feed pump] Turbine due to water carry over. The Main/RFP Turbine do not serve a safety function, also at <25% [Rated Thermal Power] RTP a level 8 transient event will not cause a reactor scram. An analysis of information in the bases for APLHGR [average planar linear heat generation rate] and MCPR [minimum critical power ratio] has shown that a sufficient margin to core safety limit exist, so fuel integrity levels are not violated. Therefore, the proposed TS change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Should the feedwater/main turbine trip system, Reactor Vessel Water Level-High Level 8, not actuate in OPCON 1 at <25% RTP, operator action per existing plant startup procedures would protect the Main/RFP turbines. If operator action is not performed, damage to Balance of Plant, non-safety related equipment could occur. High Reactor Vessel Water Level is not a concern for reactor core safety at <25% RTP. Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

The proposed TS change, which revises the feedwater/main turbine trip system actuation instrumentation, Reactor Vessel Water Level-High Level 8, operability requirements, does not affect the TS bases. The trips are designed to protect Balance of Plant Equipment at all Rate Power Levels. The Reactor Vessel Water Level-High Level 8 trips also protects fuel integrity at >25% RTP. Therefore, the proposed TS change to the operability requirements for the feedwater/main turbine trip system actuation instrumentation does not involve a reduction in a margin of safety.

Section 4: Permit Operability of Low Pressure Coolant Injection While Aligned to Shutdown Cooling

1. The proposed Technical Specifications change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The LPCI [low pressure coolant injection] mode of RHR is an accident mitigator, not an initiator. Currently, the

LPCI mode of RHR is an automatic Emergency Core Cooling System (ECCS) function during OPCONs 4 and 5. However, shutdown cooling has been an accident initiator in many industry events. Reliance on this loop of RHR for LPCI does not increase the probability of an accident in shutdown cooling, but the alignment for LPCI will, in itself, terminate the draindown event by exiting the shutdown cooling mode. This proposed change will permit the operability of one LPCI subsystem while the components of that subsystem are aligned and operating in the Shutdown Cooling mode of RHR, provided all other components of that subsystem are operable and can be manually realigned from the Main Control Room, if required. The required number of operable Emergency Core Cooling Systems (ECCS) remains unchanged, thus maintaining the TS required subsystem redundancy (TS Section 3.5.2 requires two operable ECCS subsystems with exception for Reactor level). With this change, the required number of LPCI subsystems are capable of performing their function of limiting and/or mitigating the consequences of an accident, by allowing the manual alignment of one LPCI subsystem, during OPCONs 4 and 5. This allowance is justified since the change only applies to OPCONs 4 and 5, when reactor temperature, and associated heat loads are sufficiently low to provide the operator sufficient time to perform the manual realignment, from the Main Control Room, of the RHR pump suction valves and restart of the pump following LPCI injection conditions. Similar allowances for LPCI are currently permitted during OPCON 3, since the decay heat loads are significantly reduced compared to OPCON 1, which is the mode of operation under which ECCS capability is analyzed (Section 6.3 of the LGS [Limerick Generating Station] Updated Final Safety Analysis Report (UFSAR)). The change will not increase the probability of occurrence or consequences of a malfunction of equipment since there will be no physical changes made to plant equipment nor the method of their operation that would result in an unanalyzed condition. PECO Energy [Philadelphia Electric Company] evaluated the need for manual realignment of the pump minimum flow path since operating in Shutdown Cooling typically results in the isolation of the pump minimum flow path to prevent inadvertent draining of the reactor vessel. The associated pump is still operable since this change is limited to OPCONs 4 and 5, when reactor pressure is sufficiently low to allow immediate injection to the reactor vessel without a minimum flow path. In situations, while in OPCON 4, where reactor pressure may not be sufficiently low to allow injection, the RHR system will not be aligned for Shutdown Cooling, since the reactor vessel pressure will be greater than the RHR "cut-in" permissive pressure. In addition, Administrative Controls are currently in place to realign RHR to the LPCI mode for planned pressure increases. Finally, this change is consistent with NUREG–1433 "Standard Technical Specifications." Therefore, these changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The LPCI mode of RHR is an accident mitigator, not an initiator. This change will not reduce the number of required ECCS during OPCONs 4 and 5. This change will permit the operability of one LPCI subsystem while the components of that subsystem are aligned and operating in the Shutdown Cooling mode of RHR. The change does not alter current methods of plant operation nor does the change make a physical change to plant equipment resulting in an unanalyzed malfunction of equipment. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

The basis of TS Section 3.5.2 is to ensure sufficient ECCS capacity to maintain core cooling in OPCONs 4 and 5. This proposed change does not affect the required number of ECCS during OPCONs 4 and 5; therefore, adequate capability through subsystem redundancy is maintained. The amount of time required to obtain rated LPCI conditions is increased due to the manual realignment, from the Main Control Room, of the suction valves and restart of the RHR pump following LPCI injection conditions. This change is in conformance with the current TS bases, since the operator has sufficient time to perform the manual realignment, during OPCONs 4 and 5, ensuring sufficient ECCS capability to maintain core coverage. In addition, NUREG–1433 BASES states, in part, "One LPCI subsystem may be aligned for decay heat removal and considered OPERABLE for the ECCS function, if it can be manually realigned (remote or local) to the LPCI mode and is not otherwise inoperable. Because of low pressure and low temperature conditions in MODES 4 and 5, sufficient time will be available to manually align and initiate LPCI subsystem operation to provide core cooling prior to postulated fuel uncover." Therefore, this change will not involve a significant reduction in a margin of safety.

Section 5: Remove Temperature Requirement for Operational Condition 5

1. The proposed Technical Specifications (TS) change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change does not involve a physical change in the configuration of any systems important to safety. The elimination of a temperature requirement from the definition of OPCON 5 was reviewed for potential effect on reactor coolant system materials and for potential effect on reactivity. This TS change does not result in system temperature and pressure change or reactivity changes not previously analyzed. The reactor pressure vessel will still be restricted to the temperature and pressure limits of TS Section 3/4.4.6 which includes heatup/cooldown rates and minimum boltup limits. The reactor pressure vessel temperature and pressure limits will still ensure proper protection of the reactor coolant system materials. Therefore, this TS change does not increase the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS change does not involve any physical change in plant configuration, and reactor coolant system temperature and pressure are still restricted per TS Selection 3/4.4.6. The decrease in moderator density corresponding to the potential change in temperature (i.e., above 140°F and below 200°F) would have a negligible, however conservative effect on shutdown margin. Therefore, this TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

This proposed TS change does not change the reactor coolant system material restrictions as defined in TS Section 3/4.4.6. Therefore, the reactor pressure vessel will still be maintained under the current temperature and

pressure restrictions as well as the current boltup limits.

The decrease in moderator density corresponding to the potential temperature change from 140°F to 200°F is insignificant and would afford approximately the same moderator effect. Therefore, shutdown margin could only be improved (although marginally) at these evaluated temperatures. The actual coolant temperature will be administratively controlled to provide for personnel safety. Therefore, this change will not involve a reduction in a margin of safety.

Section 6: Reduce Frequency of Alternate Decay Heat Demonstration

1. The proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change does not involve any physical changes to plant systems or equipment. This proposed TS change will allow the use of either an "analytical approach" (i.e., calculation) or "demonstration" to ensure the operability of an alternate decay heat removal method. This proposed TS change does not involve any physical changes to plant systems or components, nor does it affect the capability, availability, or operability of any decay heat removal systems/methods (e.g., Shutdown Cooling). The Shutdown Cooling mode of operation of the Residual Heat Removal (RHR) system, and Residual Heat Removal Service Water (RHRSW) system, are not impacted by this proposed TS change, and will continue to function as designed to remove decay heat loads from the reactor primary coolant system. The RHRSW system and various modes of operation of the RHR system, e.g., Low Pressure Coolant Injection (LPCI) are not accident initiators, since these systems function to mitigate the consequences of an accident. This proposed TS change is consistent with the criteria delineated in the Improved Standard TS (i.e., NUREG–1433, "Standard Technical Specifications, General Electric Plants, BWR/4," dated September 28, 1992).

Therefore, the proposed TS change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed TS change does not involve any physical changes to plant systems or equipment. The proposed TS change will allow the use of a "calculation" or "demonstration" as the means for determining the operability of an alternate decay heat removal method. The proposed TS change does not involve any physical changes to plant systems or equipment. This proposed TS change will not affect the operation of the Shutdown Cooling mode of the RHR system. This mode of operation will continue to function as designed to remove decay heat loads from the reactor primary coolant system. This proposed TS change will not impact the operation of the other modes of operation of the RHR system (e.g., LPCI), nor will it affect the operation of the RHRSW system. These systems will continue to function as designed, which is to mitigate the consequences of an accident. This proposed TS change will not introduce the potential for equipment malfunctions or failures. This proposed TS change is consistent with the criteria delineated in the Improved Standard TS (i.e., NUREG–1433).

Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

The proposed change to the TS does not involve any physical changes to plant systems or equipment. This proposed TS change does not make any physical modifications to plant systems or equipment, and is consistent with the criteria delineated in the Improved Standard TS (i.e., NUREG–1433). The proposed TS change will not impact any mode of operation of the RHR system or the RHRSW system.

This proposed TS change involves revising TS ACTION statements, and associated supporting Bases sections, to allow for the use of a "calculation" or "demonstration" to ensure the operability of an alternate decay heat removal method. The bases for the TS sections affected by this proposed change indicate that sufficient heat removal capability, system redundancy, and coolant circulation will be available to facilitate decay heat removal and mixing to assure accurate temperature indication.

This proposed TS change does not affect the function or availability of any decay heat removal system or method.

Therefore, the proposed TS change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J.W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101.

NRC Project Director: John F. Stolz.

Power Authority of the State of New York

Docket No. 50–333

James A. FitzPatrick Nuclear Power Plant, Oswego County, New York.

Date of amendment request: October 3, 1994.

Description of amendment request: The proposed amendment would extend the functional test intervals and allowable out-of-service times for some of the instruments subject to requirements of the Technical Specifications (TSs). These proposed changes are based upon NRC-approved Licensing Topical Reports prepared under the direction of the Boiling Water Reactors Owners Group and intended to enhance plant safety by reducing the potential for test related scrams, excessive test cycles on equipment, and operator errors. The proposed amendment would also: (1) Remove the Average Power Range Monitor (APRM) downscale scram function from the TSs, remove instrument response time values from the TSs in accordance with Generic Letter 93–08, and incorporate various editorial changes and clarifications into the TSs. The proposed amendment involves reactor protection system, primary containment isolation, emergency core cooling, control rod block, and anticipated transient without scram recirculation pump trip instrumentation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated because:

a. Incorporate STI [Surveillance Test Interval] and AOT [Allowable Out-Of-Service Time] Improvement—Category 1

The proposed changes are limited to an extension of the surveillance testing intervals and allowable out-of-service times of plant instrumentation. The changes do not introduce any new modes of plant operation, make any physical changes, or alter any operational setpoints. Therefore, the changes do not degrade the performance of any safety system assumed to function in the accident analysis. Consequently, there is no effect on the probability of occurrence of an accident.

Regarding the consequences of an accident, the GE [General Electric Company] Licensing Topical Reports (References 1 through 7) concluded that the proposed extensions in the STI and AOT for the safety system instrumentation results in an insignificant change in the core damage frequency. The extension of the STI/AOTs results in a slight increase in the unavailability of the safety functions. However, this effect is offset by a reduction in the probability of inadvertent plant trips due to reduced testing. The overall effect on the probability of an accident is negligible. While the effects of reducing unnecessary cycles on safety system instrumentation is not quantifiable, the effect will be to further reduce the core damage frequency. The NRC concurred in their SERs [Safety Evaluation Reports] (References 8 through 15) with these conclusions. Consequently, there is not a significant increase in the consequences of an accident.

b. Relocation of the Instrument Response Time Limits—Category 2

The change involves the use of an alternate regulatory process for controlling the instrument response time limits. The change does not introduce any new modes of plant operation, make any physical changes, alter any operational setpoints, or change the surveillance requirements.

c. Delete APRM Downscale Scram—Category 3

The design basis accident applicable to the startup power region is the Control Rod Drop Accident (CRDA). The FSAR [Final Safety Analysis Report] does not credit the APRM downscale scram in the termination of this accident. Accident mitigation is provided by the APRM fixed high neutron flux scram. Therefore, elimination of this scram functions has no adverse affect on previously evaluated accidents.

d. Miscellaneous Changes—Category 4

The changes do not introduce any new modes of plant operation, make any physical changes, or alter any operational setpoints. The changes involve enhancements that clarify the Technical Specification requirements.

2. Create the possibility of a new or different kind of accident from those previously evaluated because:

a. Incorporate STI and AOT Improvements—Category 1

The proposed changes do not introduce any new accident initiators or failure mechanisms since the changes do not introduce any new modes of plant operation, make any physical changes, or alter any operational setpoints. The changes reduce the probability of accidents initiated by test-induced plant trips.

b. Relocation of the Response Time Limits—Category 2

The change involves the use of an alternate process for controlling the instrument response time limits. The change does not introduce any accident initiators since it does not involve any new modes of plant operation, make any physical changes, alter any operational setpoints, or change the surveillance requirements.

c. Delete APRM Downscale Scram—Category 3

Scram functions are intended to shutdown the reactor following transients or accidents and their removal does not introduce an accident initiator. The limiting accident evaluated in the FSAR for the startup power region is the control rod drop accident. This accident is assumed to occur irrespective of the scram functions provided to terminate this accident.

d. Miscellaneous Changes—Category 4

The changes do not introduce any new accident initiators or failure mechanisms since the changes do not alter the physical characteristics of any plant system or component. The changes involve enhancements that clarify the Technical Specification requirements.

3. Involve a significant reduction in the margin of safety because:

a. Incorporate STI and AOT Improvements—Category 1

The proposed changes do not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. The affected instrumentation setpoints already account for the effects of drift and include sufficient allowance for an extension in the STIs. The evaluations presented in the referenced Licensing Topical Reports concluded that the overall effect of the proposed changes provides a net increase in plant safety. The improvement is achieved by reducing the potential for: (a) Test related plant scrams (reduced challenges to plant shutdown systems and improved plant availability); (b) excessive test cycles on equipment (reduced wear-out potential); (c) operator errors (AOT provides reasonable time for making repairs and tests); (d) scrams that occur when inoperable channels are tripped because insufficient repair time exists; and (e) diversion of plant personnel and resources on unnecessary testing (potential safety and operational improvement).

b. Relocation of the Response Time Limits—Category 2

The change involves the use of an alternate regulatory process for controlling the instrument response time limits. The change does not introduce any new modes of plant operation, make any physical changes, alter any operational setpoints, or change the surveillance requirements.

c. Delete APRM Downscale Scram—Category 3

The only scram function that the UFSAR [Updated Final Safety Analysis Report] takes credit for in the mitigation of the limiting accident (control rod drop accident) is the APRM 15% power fixed high neutron flux scram. This scram function, as well as the IRM [Intermediate Range Monitor] high flux scram function in the startup mode which could also terminate this accident, are not affected by this change. Only the APRM downscale scram, for which the UFSAR takes no credit in the termination of any analyzed event, is eliminated by this change. The APRM downscale control rod block is not affected by this change. Elimination of the APRM downscale scram will avoid the need to operate the plant in a "half scram" condition for certain IRM/APRM channel bypass combinations, therefore eliminating the potential for an inadvertent plant transient. For these reasons, the change does not involve a significant reduction in the safety margin.

d. Miscellaneous Changes—Category 4

The changes assure compliance with the Technical Specifications by improving its clarity and accuracy. For these reasons the changes will improve the plant's margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Ledyard B. Marsh.

Power Authority of the State of New York

Docket No. 50–333

James A. FitzPatrick Nuclear Power Plant, Oswego County, New York.

Date of amendment request: October 7, 1994.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 4.6.E.4 to establish that the manual cycling of reactor coolant system (RCS) safety/relief valves (SRVs) during plant startups is to be accomplished within 12 hours after steam pressure and flow are adequate to perform the testing. TS 4.6.E.4 currently requires this testing to be performed within 12 hours of continuous power operation at a reactor steam dome pressure of at least 940 psig. This change was proposed to minimize the potential for undesirable pressure transients in the RCS. The amendment would also make several editorial changes to clarify the intent of TS's involving SRV valve testing and performance requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the James A. FitzPatrick Nuclear Power Plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed changes do not change the test method or conditions under which valve testing may be performed and there is no affect on assumptions used for previously analyzed accidents. The original operating license for FitzPatrick did not specify any time limit for completing manual testing of the safety/relief valves.

2. Create the possibility of a new or different kind of accident from those previously evaluated because the proposed amendment does not involve any modification of plant equipment or changes in plant operating conditions.

3. Involve a significant reduction in the margin of safety because the proposed amendment makes no changes to the operability of performance requirements for the safety/relief valves including the ADS [Automatic Depressurization System] function. Valve lift setpoints and the minimum number of operable valves required are not affected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Ledyard B. Marsh.

Public Service Electric & Gas Company

Docket Nos. 50–272 and 50–311

Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey.

Date of amendment request: September 9, 1994.

Description of amendment request: The proposed amendment modifies the visual inspection for snubbers in the Technical Specifications and is consistent with the guidance provided in Generic Letter 90–09.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes involve no hardware changes, no changes to the operation of snubbers, and does not change the ability of the snubbers to perform their intended functions. Visual inspection of snubbers is a separate process that complements the functional testing program. The NRC has concluded that functional testing of snubbers provides a 95 percent confidence level and 90 to 100 percent of the snubbers will operate within the specified acceptance limits. Any change in the visual inspection frequency will not have any significant impact on the operability of the snubbers.

2. Will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes will not result in an unanalyzed condition. Replacing the current method of determining visual surveillance intervals with a new method approved by the NRC in Generic Letter 90–09 will not change the level of confidence in snubber operability. A new procedure for determining visual inspection frequencies will not result in an unreviewed failure mechanism.

3. Will not involve a significant reduction in a margin of safety.

The proposed changes incorporate the alternate Technical Specification requirements for visual inspection of snubbers identified in Generic Letter 90–09. The alternate visual inspection criteria consider the size of the category of snubbers when evaluating inspection intervals due to failure rates. Since the functional testing requirements remain unchanged and do not reduce the operability confidence levels, there is no resultant change in any margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW, Washington, DC 20005–3502.

NRC Project Director: John F. Stolz.

Public Service Electric & Gas Company

Docket Nos. 50–272 and 50–311

Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey.

Date of amendment request: September 20, 1994

Description of amendment request: The proposed amendment modifies the Technical Specifications for auxiliary feedwater to reduce the secondary side steam pressure required for testing the steam turbine driven auxiliary feedwater pump (AFW). The proposed amendment also clarifies the time

required to perform the steam turbine driven auxiliary feedwater pump surveillance test when entering Mode 3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed change to the minimum required test pressure for the steam turbine driven AFW pump does not affect the operation of the pump during conditions when it is required to performed its safety function. The clarification that the secondary side steam pressure is steam generator pressure is editorial. Reduced Tavg and increased steam generator tube plugging will affect the normal operating secondary side steam pressure.

However, the zero load secondary side steam pressure is not affected, therefore, the conditions in which the steam turbine driven AFW pump will be required to perform its safety function are not changed.

Providing a specific time frame in which to perform the surveillance test after attaining the required steam pressure ensures that the test will be performed in a timely manner. The time frame specified is consistent with NUREG–1431, Standard Technical Specifications—Westinghouse Plants.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident.

The proposed changes do not change system configurations, plant equipment, or analysis. Therefore, the proposed changes will not increase the possibility of a new or different kind of accident from any accident previously identified.

3. Involve a significant reduction in a margin of safety.

The proposed change to the minimum required steam pressure will not affect the heat removal capability of the AFW System. Therefore, the value assumed in the safety analysis is not changed. The change to the specification 4.0.4 exemption to provide a specific time period does not affect any margins of safety. Therefore, these changes do not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW, Washington, DC 20005–3502

NRC Project Director: John F. Stolz.

Public Service Electric & Gas Company

Docket Nos. 50–272 and 50–311

Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey.

Date of amendment request: September 20, 1994.

Description of amendment request: These proposed changes would adopt the Westinghouse Standard Technical Specifications (NUREG–1431) Channel Functional Test surveillance frequency for the Manual Reactor Trip Switches and for the Reactor Trip Breakers (RTB) and relocate RTB maintenance requirements from the Technical Specifications to the Salem, Units 1 and 2, Updated Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does not involve a significant increase in the probability or consequence of an accident previously evaluated.

The proposed changes do not affect accident conditions or assumptions. They change the existing surveillance test and their frequencies to make them consistent with industry standards, and relocate maintenance requirements to the UFSAR [Updated Final Safety Analysis Report].

The changes, for the Manual Reactor Trip Switch and Reactor Trip Breaker (RTB) CHANNEL FUNCTIONAL TEST frequency, incorporate the established Westinghouse STS surveillance frequencies. These surveillance frequencies have received previous NRC review and generic approval via the issuance of NUREG–1431. The Westinghouse STS does not require Channel Functional Test for the Manual Reactor Trip Switches or the RTB prior to each reactor startup.

The addition of the RTB shunt trip feature for automatic reactor trips, the improved RTB maintenance activities developed over the past several years, and the implementation of 10 CFR 50.62 requirements have improved RTB reliability. These features are unaffected by the proposed changes. Excessive RTB testing results in increased component wear and possibly reduced component life. Testing the RTBs with associated logic trains reduces the potential for human errors and associated plant transients.

The consequences of accidents previously evaluated are unaffected by the proposed changes.

2. Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not modify any system or equipment, nor alter any process function. The Manual Reactor Trip Switch and RTB functionality remains unchanged. Therefore these changes do not create a new or un-evaluated accident or operating condition.

3. Does not involve a significant reduction in a margin of safety.

The proposed changes adopt the NRC approved Westinghouse STS surveillance testing frequencies to maintain RTB reliability. Reduced testing at power, consistent with the associated logic train test frequency, reduces the potential for inadvertent actuation and personnel errors. Thus, the proposed changes enhance plant safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW, Washington, DC 20005–3502.

NRC Project Director: John F. Stolz.

Saxton Nuclear Experimental Corporation

Docket No. 50–146

Saxton Nuclear Facility, Bedford County, Pennsylvania.

Date of amendment request: August 8, 1994. This supersedes the request dated June 23, 1993.

Description of amendment request: The proposed amendment would revise the technical specifications to allow characterization activities related to the decommissioning of the Saxton Nuclear Facility and add administrative activities associated with the characterization activities.

Basis for Proposed No Significant Hazards Consideration Determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant hazards considerations because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The activities associated with characterization of the facility will have a minimum impact on the physical condition of the containment vessel as it relates to the risk of fire and has no effect on the risk of flooding.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

In its present condition, the only accidents applicable to the site are fire, flood, and radiological hazard. The possibility of a new or different type of accident than that previously evaluated in the FSAR will not be created by the implementation of activities permitted by the approval of this amendment request.

3. Involve a significant reduction in a margin of safety.

No margins of safety relevant to the equipment at the facility exist. Activities involved in characterization will not involve a reduction in a margin of safety.

The NRC staff has reviewed the analysis of the licensee and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Saxton Community Library, 911 Church Street, Saxton, Pennsylvania 16678.

Attorney for the Licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: Seymour H. Weiss.

Southern California Edison Company, et al.

[Docket Nos. 50–361 and 50–362

San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California.

Date of amendment request: August 26, 1994.

Description of amendment requests: The licensee proposes to revise Technical Specification (TS) 3/4.7.5, "Control Room Emergency Air Cleanup System." The proposed revision to TS 3/4.7.5 will provide a Limiting Condition of Operation (LCO) 3.0.4 exception for MODES 5, 6, or a defueled configuration.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The Control Room Emergency Air Cleanup System (CREACUS) provides a protected environment from which operators can control the plant following an uncontrolled release of radioactivity or toxic gas.

[The following are the proposed changes to Technical Specification 3/4.7.5 "Control Room Emergency Air Cleanup System:"]

Proposed Change 1 [adds the following statement to the Applicability statement of TS 3.7.5: "or during movement of irradiated fuel assemblies."] will replace the existing wording of the Applicability with the following words "ALL MODES or during movement of irradiated fuel assemblies." The requirement concerning movement of irradiated fuel assemblies was added because the existing Applicability statement does not reflect the possibility of radiation exposure to the operators inside the control room during this event. A fuel handling accident can happen during defueled operations. In this case, movement of the last irradiated fuel assembly from the empty core inside containment is not covered by the existing Applicability.

Also, a fuel handling accident can happen inside the Fuel Handling Building when irradiated fuel is moved from one location to another in the Spent Fuel Pool (SEP). The need for the CREACUS during fuel handling is based on safety analysis assumptions which are specified in Chapter 15 of the SONGS Unit 2 and 3 Updated Final Safety Analysis Report (UFSAR).

Addition of the new Applicability requirement will not involve a significant increase in the possibility or consequences of any accident previously evaluated.

Proposed Change 2 [a new Action d): "The provisions of Specification 3.0.4 are not applicable when entering MODES 5, 6, or defueled configuration" is added to the Action section of TS 3.7.5] will add a new Action d) which reads: "the provisions of Specification 3.0.4 are not applicable when entering MODES 5, 6, or defueled configuration." Existing Technical Specification 3/4.7.5 prohibits entering MODE 6 from a defueled configuration unless both CREACUS trains are OPERABLE. With the addition of the statement "or during movement of irradiated fuel assemblies" to the Applicability, OPERABILITY of the CREACUS will be ensured prior to movement of irradiated fuel assemblies. Therefore, the only threshold between defueled configuration and MODE 6 is the position of the first irradiated fuel assembly—whether it is in the reactor vessel or external to it. This threshold has no safety significance because the only credible event during the transition from a defueled configuration to MODE 6 and from MODE 6 to defueled configuration is a Design Basis Fuel Handling Accident which is covered by the proposed Applicability. Therefore, this threshold can be expected from Limiting Condition for Operation (LCO) 3.0.4.

The threshold of entering MODE 5 from MODE 6 consists of fully tightening the last reactor vessel head closure bolt. This evolution has no safety significance from the point of view of isolating the control room from external hazards. Therefore, this MODE change can be excepted from LCO 3.0.4. The threshold of entering MODE 6 from MODE 5 consists of untightening at least one reactor vessel head closure bolt. If no irradiated fuel assemblies are being moved, this evolution has no safety significance from the point of view of isolating the control room from external hazards. Therefore, this MODE change can be excepted from LCO 3.0.4 also.

The threshold of entering MODE 5 from MODE 4 consists of decreasing Reactor Coolant System (RCS) temperature from 350°F > Tavg > 200°F to Tavg [less than or equal to] 200°F by initiating shutdown cooling. If no irradiated fuel assemblies are being moved, this evolution has no safety significance from the point of view of isolating the control room from external hazards. Therefore, this MODE change can be excepted from LCO 3.0.4.

The MODE changes have no significance relative to releases. Therefore, since CREACUS can be inoperable during each individual mode, it should not be required to have two OPERABLE CREACUS trains before mode changes.

Therefore, addition of the new Action will not involve a significant increase in the probability or consequences of any accident previously evaluated.

Proposed Change 3 [adds the following words "or defueled configuration when moving irradiated fuel assemblies" after the words "Units 2 and 3 in MODE 5 or 6" in the Action statement of TS 3.7.5] will add the words "or defueled when moving irradiated fuel assemblies" to the Action statement when either Unit is in MODE 5 or 6. These words are added for consistency with a proposed Applicability statement "or during movement of irradiated fuel assemblies." Without these words it is not clear what Actions should be entered if the LCO requirement is not met in a defueled configuration when moving irradiated fuel assemblies. By adding these words Actions (a) and (b) became applicable in a defueled configuration when moving irradiated fuel assemblies. This change applies the requirement of the proposed Applicability to the Action when either Unit is in MODES 5 or 6. Therefore, addition of these words to the Action statement will not involve a significant increase in the probability or consequences of any accident previously evaluated.

Proposed Change 4 [adds the following words "or movement of irradiated fuel assemblies" after the words "suspend all operations involving CORE ALTERATIONS or positive reactivity changes" in the Action (b) statement of TS 3.7.5] will add the words "or movement of irradiated fuel assemblies" in the Action (b) statement. These words are added for consistency with the proposed Applicability statement and proposed Action statement when either Unit is in MODES 5 or 6, or a defueled configuration when moving irradiated fuel assemblies. Without addition of these words Action (b) did not specify what should be done when any Unit is in a defueled configuration when moving irradiated fuel assemblies. Therefore, addition of these words to the Action statement will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The changes proposed herein do not reduce the reliability or performance of the Control Room Emergency Air Cleanup System (CREACUS). The proposed LCO 3.0.4 exception for CREACUS permits MODE 5, MODE 6, or defueled configuration entry with one train of CREACUS inoperable. This change does not affect CREACUS reliability and its capability to perform its intended design functions.

Additional requirements in the Applicability to have two Control Room Emergency Air Cleanup Systems OPERABLE during movement of irradiated fuel covers the consequences of a fuel accident in the Fuel Handling Building and in containment when the reactor vessel is defueled. Operation of the facility will remain unchanged as a result of the proposed changes.

Also, addition of the requirement to suspend movement of irradiated fuel assemblies when either Unit is in a defueled configuration when moving irradiated fuel is made for consistency with the proposed Applicability statement and Action statement. The proposed Action statement emphasize that Actions (a) and (b) are applicable not only when either Unit is in MODES 5 or 6, but also when in a defueled configuration when moving irradiated fuel assemblies. This change does not affect CREACUS reliability and its capability to perform its intended design functions. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No.

Operation of the facility in accordance with these changes will not be adversely affected as a result of the changes proposed herein. The proposed changes include a change to the Applicability, adding the new Action (d), modifying the Action statement when either Unit is in MODES 5 or 6, and modifying the Action (b). The proposed LCO 3.0.4 exception for CREACUS permits MODE 5, MODE 6, or defueled configuration entry with one train of CREACUS inoperable. Additional requirements in the Applicability statement to have two Control Room Emergency Air Cleanup Systems OPERABLE during movement of irradiated fuel, covers the consequences of the fuel accident in the Fuel Handling Building. Also, this requirement covers the movement of irradiated fuel when the reactor vessel is defueled. Modified Action statement for either Unit in MODES 5 or 6 is made for consistency with the proposed Applicability statement. Modified Action (b) covers the possibility of both the CREACUS trains being inoperable in a defueled configuration when moving irradiated fuel assemblies.

The margin of safety as defined in Bases 3/4.7.5 is limiting the dose to control room personnel to 5.0 rem or less whole body, or its equivalent. As discussed above, operation of the CREACUS will be unchanged as a result of the proposed changes. Therefore, operation of the facility in accordance with this proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713.

Attorney for licensee: T. E. Oubre, Esquire, Southern California Edison Company, P. O. Box 800, Rosemead, California 91770.

NRC Project Director: Theodore R. Quay.

Southern California Edison Company, et al.

Docket Nos. 50–361 and 50–362.

San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California.

Date of amendment requests: September 16, 1994.

Description of amendment requests: The licensee proposes to revise the linear heat rate (LHR) limit in Technical Specification (TS) 3/4.2.1, "Linear Heat Rate." TS 3/4.2.1 requires maintaining the LHR at or below 13.9 kilowatts per linear foot (kw/ft) for steady-state operation. This amendment request is to revise this value from 13.9 kw/ft to 13.0 kw/ft. The Bases of TS 3/4.2.1, "Linear Heat Rate," are also being revised to reflect the new value.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The only event impacted by this Technical Specification (TS) change is the Large Break Loss of Coolant Accident (LBLOCA) which has been reanalyzed. There is a direct correlation between the magnitude of the TS 3/4.2.1 Linear Heat Rate (LHR) limit and the calculated peak cladding temperature

(PCT). Since the LHR is being reduced in value, which is a conservative change, there will be no increase in the consequences of the event. The LBLOCA reanalysis, performed using the new LHR limit in support of an optimized fuel loading pattern, resulted in a reduction of the calculated LBLOCA PCT. Therefore, this change will not involve an increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

This amendment request does not involve any change to plant equipment or operation. The linear heat rate limit provided in T/S 3.2.1 is used only in the LBLOCA analysis. No change to the LBLOCA methodology was made. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No.

This amendment does not change the manner in which safety limits, limiting safety settings, or limiting conditions for operation are determined. There is no change in the PCT acceptance criterion for this event as a result of the proposed reduction in the LHR limit. Therefore, there is no reduction in the margin of safety from the acceptance limit to the mechanical failure point of the fuel. Additionally, the analysis value for the LBLOCA PCT is reduced to 2160 °F. This results in an increase in the analysis margin between the acceptance criterion and the analysis value. Therefore, this proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Attorney for licensee: T.E. Oubre, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: Theodore R. Quay.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company

Docket No. 50–346

Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio.

Date of amendment request: October 7, 1994.

Description of amendment request: The proposed amendment would remove the existing Surveillance Requirement (SR) 4.5.2.d.3 for the Low Pressure Injection (LPI) System and the existing SR 4.6.2.1.c for the Containment Spray (CS) System since the requirement to leak test these systems is programmatically covered in TS 6.8.4.a, "Primary Coolant Sources Outside Containment." Additionally, changes are proposed to TS Bases 3/4.5.2 and 3/4.6.2.1 to reflect the elimination of the above SRs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The change does not involve a significant increase in the probability of an accident previously evaluated nor does it involve a significant increase in the consequences of an accident previously evaluated because no accident initiators, conditions or assumptions are affected by removing the leak test requirements of LPI System SR 4.5.2.d.3 and CS System SR 4.6.2.1.c. The purpose of these SRs is already encompassed by the existing program requirements of TS 6.8.4.a, "Primary Coolant Sources Outside Containment." TS 6.8.4.a requires integrated leak testing at refueling cycle intervals or less, for each system outside containment, that could contain highly radioactive fluids during a serious transient or accident.

The proposed changes do not alter the source term, containment isolation, or allowable releases. The proposed changes, therefore, will not increase the radiological consequences of a previously evaluated event.

These changes are consistent with NUREG–1430, Revision 0, "Improved Standard Technical Specifications for B&W Plants." The associated changes to TS Bases 3/4.5.2 and 3/4.6.2.1 are administrative.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not create the possibility of any new or different kind of accident from any accident previously evaluated because no new accident initiators or assumptions are introduced by these proposed changes to LPI System SR 4.5.2.d.3 and CS System SR 4.6.2.1.c. The purpose of these SRs is already encompassed by the existing program requirements of TS 6.8.4.a, "Primary Coolant Sources Outside Containment," which requires leak testing to be performed on the LPI and CS Systems. These changes are consistent with NUREG–1430. The associated changes to TS Bases 3/4.5.2 and 3/4.6.2.1 are administrative. The proposed changes do not alter any accident scenarios.

(3) The proposed changes do not result in a significant reduction in the margin of safety.

The changes do not involve a significant reduction in the margin of safety because the proposed changes to the LPI System SR 4.5.2.d.3 and CS System SR 4.6.2.1.c do not reduce or adversely affect the capabilities of any plant structures, systems or components. The purpose of these SRs is already encompassed by the existing program requirements of TS 6.8.4.a, "Primary Coolant Sources Outside Containment." These changes are consistent with NUREG–1430. The associated changes to TS Bases 3/4.5.2 and 3/4.6.2.1 are administrative.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Acting Project Director: C.A. Carpenter.

Virginia Electric and Power Company

Docket Nos. 50–280 and 50–281

Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of amendment request: October 11, 1994.

Description of amendment request: The proposed changes would modify the surveillance frequencies of the containment hydrogen analyzers.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Specifically, operation of Surry Power Station in accordance with the proposed Technical Specifications will not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

The proposed changes to the surveillance requirements for the hydrogen analyzers have no impact on the probability of any accident occurrence. The hydrogen analyzers are maintained in a standby mode during normal operation and are made fully operable within thirty minutes after a safety injection signal to provide indication of the hydrogen concentration in containment after a loss-of-coolant accident. This instrumentation is used solely post-accident to monitor containment conditions. Reduced testing of a post-accident monitor does not contribute to the probability of any previously analyzed accident. These monitors have no automatic safety function. Furthermore, the hydrogen analyzers will be operated in the same manner, and the operability requirements are not being altered. In addition, the Post-Accident Sampling System serves as a diverse means to confirm post-accident hydrogen concentration in containment. Therefore, the consequences of a Design Basis Accident are not being increased by the proposed change in surveillance test frequency of the hydrogen analyzers.

Reducing the frequency of surveillance testing could however decrease the timeliness in identifying an inoperable hydrogen analyzer. However, our surveillance test experience has shown that the analyzers have been very stable with repeatable results, and we conclude that the change in test frequency should not affect the reliability or operability of the analyzers. Likewise, the NRC has determined in Generic Letter 93–05 that a reduced frequency of surveillance testing during power is acceptable to determine hydrogen analyzer operability.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no plant modifications or changes in methods of plant operation introduced by this change in hydrogen analyzer surveillance frequencies. The hydrogen analyzers are maintained in a standby mode during normal operation and are fully operable within thirty minutes after a safety injection signal to provide indication of the hydrogen concentration in containment after a loss-of-coolant accident. Therefore, the possibility of a new or different kind of accident than previously evaluated is not created by the proposed changes in surveillance frequency of the control rods [hydrogen analyzers surveillance frequencies].

3. Involve a significant reduction in a margin of safety.

The hydrogen analyzer surveillance requirements do not affect the margin of safety in that the operability requirements for the safety systems and containment remain unchanged. The hydrogen analyzers only provide indication and do not perform any direct function to mitigate the consequences of any previously analyzed accidents. Furthermore, the change in surveillance frequency is associated with a post-accident monitor with no automatic safety functions and a diverse means of confirming the parameter by the Post-Accident Sampling System. Therefore, the margin of safety is not altered by this proposed change in the surveillance frequencies of the hydrogen analyzers.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: Mohan C. Thadani (Acting).

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Northeast Nuclear Energy Company, et al.

Docket No. 50–336

Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut.

Date of amendment request: September 26, 1994.

Description of amendment request: The proposed amendment would revise the Technical Specifications by adding a footnote to Surveillance Requirement 4.6.1.2.d that defers the performance of Type B and C containment leak rate tests to the end of the twelfth refueling outage.

Date of publication of individual notice in **Federal Register**: October 13, 1994, (59 FR 52005).

Expiration date of individual notice: November 14, 1994.

Local Public Document Room location: Learning Resource Center, Three Rivers Community—Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has

prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document rooms for the particular facilities involved.

Arizona Public Service Company, et al.

Docket Nos. STN 50–528, STN 50–529, and STN 50–530

Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona.

Date of application for amendments: August 23, 1993, as supplemented by letter of July 21, 1994.

Brief description of amendments: These amendments remove the Units 1 and 3 license condition regarding an augmented reactor coolant pump vibration monitoring program and the confirmatory order modifying the Unit 2 license regarding the same issue.

Date of issuance: October 27, 1994.

Effective date: October 27, 1994.

Amendment Nos.: 84, 72, and 56.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 29, 1993 (58 FR 50963).

The additional information in the letter dated July 21, 1994, was clarifying in nature and did not affect the staff's previously published no significant hazards determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 27, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Baltimore Gas and Electric Company

Docket Nos. 50–317 and 50–318

Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 & 2, Calvert County, Maryland.

Date of application for amendments: August 4, 1994.

Brief description of amendments: The amendments delete Technical Specifications 3/4.3.3.3, 6.9.2.b, 6.9.2.d, and Bases 3/4.3.3.3, which provide the requirements for the operation and the testing of seismic monitoring instrumentation, and relocates them to the Updated Final Safety Analysis Report and plant procedures.

Date of issuance: October 21, 1994.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 199 and 176

Facility Operating License No. DPR–53 and DPR–69: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 14, 1994 (59 FR 47165).

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated October 21, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Baltimore Gas and Electric Company

Docket Nos. 50–317 and 50–318

Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland.

Date of application for amendments: November 4, 1993.

Brief description of amendments: These amendments revise the Updated Final Safety Analysis Report to address the removal of orifice plates in the containment vent/purge lines of each unit and revise the maximum hypothetical accident analysis to address the increased flow as the result of removing the orifice plates.

Date of issuance: October 21, 1994.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 200 and 177.

Facility Operating License No. DPR–53 and DPR–69: Amendment revised the Licenses.

Date of initial notice in **Federal Register**: February 25, 1994 (59 FR 9254).

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated October 21, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Commonwealth Edison Company

Docket Nos. STN 50–454 and STN 50–455

Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois.

Date of application for amendments: August 1, 1994, as supplemented by your letters dated September 7, 1994, and September 17, 1994 (two letters), with clarifying information submitted by letters dated September 22, 1994, September 23, 1994, September 30, 1994, October 17, 1994, and October 24, 1994.

Brief description of amendments: The purpose of the amendment is to incorporate voltage-based repair criteria into the Byron, Unit 1, technical specifications, thereby permitting the use of voltage-based steam generator (SG) tube plugging criteria for a specific class of SG tube defects.

Date of issuance: October 24, 1994.

Effective date: October 24, 1994.

Amendment Nos.: 66 and 66.

Facility Operating License Nos. NPF–37 and NPF–66: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 23, 1994 (59 FR 48917).

The clarifying information in the September 22, 1994, September 23, 1994, September 30, 1994, October 17, 1994, and October 24, 1994, submittals did not affect the initial determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 24, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010.

Commonwealth Edison Company

Docket Nos. STN 50–454 and STN 50–455

Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois.

Docket Nos. STN 50–456 and STN 50–457

Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois.

Date of application for amendments: March 23, 1994, as supplemented on July 26, 1994.

Brief description of amendments: The amendments change the Technical Specifications to reflect a reduced thermal flow to compensate for increased steam generator tube plugging up to 15 percent of the total number of tubes. The amendment also approves the use of higher boron concentration in the refueling water storage tank, the reactor coolant system accumulators, and the refueling cavity.

Date of issuance: October 21, 1994.

Effective date: October 21, 1994.

Amendment Nos.: 65, 65, 56, and 55.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 15, 1994 (59 FR 41802).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 21, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Consumers Power Company

Docket No. 50–255

Palisades Plant, Van Buren County, Michigan.

Date of application for amendment: November 15, 1991, supplemented February 22, March 11, April 7, and August 23, 1994.

Brief description of amendment: This amendment is a complete rewrite of the instrumentation operability requirements.

Date of issuance: October 26, 1994.

Effective date: October 26, 1994.

Amendment No.: 162.

Facility Operating License No. DPR–20. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 25, 1994 (59 FR 27052)

The August 23, 1994, request contained editorial changes within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration findings. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 26, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

Entergy Operations, Inc.,

Docket No. 50–313

Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas.

Date of amendment request: January 13, 1994.

Brief description of amendment: The amendment revised the specifications governing the reactor protection system (RPS) to permit the plant to operate indefinitely with one RPS channel in by-pass.

Date of issuance: October 24, 1994.

Effective date: October 24, 1994.

Amendment No.: 174.

Facility Operating License No. DPR–51. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 2, 1994 (59 FR 10005).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 24, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Florida Power and Light Company

Docket Nos. 50–250 and 50–251

Turkey Point Plant Units 3 and 4, Dade County, Florida.

Date of application for amendments: February 18, 1994, as supplemented by letter dated August 5, 1994.

Brief description of amendments: These amendments delete the audit frequencies from the Technical Specifications (TS) and modify the TS administrative control requirements for emergency and security plans.

Date of issuance: October 26, 1994.

Effective date: October 26, 1994.

Amendment Nos: 168 and 162.

Facility Operating Licenses Nos. DPR–31 and DPR–41: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 30, 1994 (59 FR 14889). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 26, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

GPU Nuclear Corporation, et al.

Docket No. 50–219

Oyster Creek Nuclear Generating Station, Ocean County, New Jersey.

Date of application for amendment: August 19, 1994.

Brief description of amendment: The amendment updates and clarifies the surveillance requirements for control rod exercising and standby liquid control pump operability testing to be consistent with Generic Letter 93–05.

Date of Issuance: October 19, 1994.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 172.

Facility Operating License No. DPR–16. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 14, 1994 (59 FR 47168).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated October 19, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

IES Utilities Inc.

Docket No. 50–331

Duane Arnold Energy Center, Linn County, Iowa.

Date of application for amendment: May 28, 1992, as supplemented on January 6, May 27 and October 20, 1994.

Brief description of amendment: The amendment revised the Technical Specifications by changing the limiting conditions for operation and surveillance requirements for primary containment integrity, secondary containment integrity, and other systems and equipment of Section 3.7, Containment Systems. Limiting conditions for operation and surveillance requirements for drywell average air temperature and secondary containment automatic isolation dampers were also added.

Date of issuance: October 26, 1994.

Effective date: October 26, 1994, to implemented within 120 days.

Amendment No.: 201

Facility Operating License No. DPR–49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 6, 1994 (59 FR 34665). The licensee's October 20, 1994, submittal, provided clarifying information at the request of the NRC staff. This submittal did not change the initial application or the no significant hazards determination as originally noticed. Therefore, renoticing was not warranted.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 26, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

Northeast Nuclear Energy Company, et al.

Docket No. 50–423

Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut.

Date of application for amendment: September 30, 1993, as supplemented July 8, 1994.

Brief description of amendment: The amendment revises the Technical

Specifications by increasing the minimum volume of fuel oil required to be stored in the emergency diesel generator (EDG) day tank from 205 gallons to 278 gallons, and clarifies the bases for the EDG fuel oil storage tank and day tank minimum fuel oil volume requirements.

Date of issuance: October 17, 1994.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 97.

Facility Operating License No. NPF–49. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 10, 1993 (58 FR 59753).

The July 8, 1994, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 17, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Pennsylvania Power and Light Company

Docket Nos. 50–387 and 50–388

Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania.

Date of application for amendments: May 31, 1994.

Brief description of amendments: These amendments change the frequency for monitoring the Susquehanna site spray pond ground water level from once per month to once every 6 months.

Date of issuance: October 20, 1994.

Effective date: Both units; as of date of issuance and to be implemented within 30 days after the date of issuance.

Amendment Nos.: 135 and 105.

Facility Operating License Nos. NPF–14 and NPF–22. These amendments revised the Technical Specifications.

Date of initial notice in Federal Register: July 6, 1994 (59 FR 34668).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 20, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company

Docket No. 50–277

Peach Bottom Atomic Power Station, Unit No. 2, York County, Pennsylvania.

Date of application for amendment: June 23, 1993, as supplemented by letters dated April 5, May 2, June 6, June 8, July 6 (two letters), July 7, July 20, July 28, 1994 (two letters), September 16, September 30, and October 14, 1994. The supplemental letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

Brief description of amendment: The amendment raises the authorized maximum power level from 3293 MWt to a new limit of 3458 MWt.

Date of issuance: October 18, 1994.

Effective date: Unit 2, effective as of its date of issuance and is to be implemented prior to startup in Cycle 11 currently scheduled for October 28, 1994.

Amendment No.: 198.

Facility Operating License No. DPR–44: The amendment revised the license and Technical Specifications.

Date of initial notice in Federal Register: August 29, 1994 (59 FR 44432).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 18, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Public Service Electric & Gas Company

Docket Nos. 50–272 and 50–311

Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey.

Date of application for amendments: February 18, as supplemented by letter dated April 6, 1994 for Salem Unit 1 and March 28, 1994 for Salem Unit 2.

Brief description of amendments: The change to Salem Unit 1 Technical Specifications (TS) replaces the main feedwater control and control bypass valves with the main feedwater stop check valves for the Containment Isolation Function. The change to Salem Unit 2 TS adds a footnote to the 21–24 BF22 (main feedwater stop check valves) on Table 3.6–1, "Containment Isolation Valves." This note identifies those containment isolation Valves that are not subject to 10 CFR Part 50, Appendix J, Type C leakage testing.

Date of issuance: October 20, 1994.

Effective date: Units 1 and 2, effective as of date of issuance and shall be implemented within 60 days of the date of issuance.

Amendment Nos.: 158 and 139.

Facility Operating License Nos. DPR–70 and DPR–75. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: July 20, 1994 (59 FR 37083).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 20, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Southern California Edison Company, et al.

Docket Nos. 50–361 and 50–362

San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: December 31, 1992.

Brief description of amendments: These amendments revise the Technical Specifications (TS) to (1) distinguish between the core operating limit supervisory system (COLSS) in service and the COLSS out of service (OOS), (2) add surveillances to monitor departure from nucleate boiling ratio (DNBR) and/or linear heat rate (LHR) every 15 minutes when the COLSS is OOS and the corresponding parameter is not being maintained as required, (3) increase the ACTION time from 1 hour to 4 hours when the COLSS is OOS and either the LHR or DNBR margin is not being maintained within the required limits, (4) change the power reduction requirements from "HOT STANDBY" to "less than or equal to 20 percent of Rated Thermal Power" when the DNBR margin and/or the LHR limiting condition for operation (LCO) cannot be met within the allowed ACTION time, and (5) revise the Bases to the TS to reflect these changes.

Date of issuance: October 27, 1994.

Effective date: October 27, 1994.

Amendment Nos.: 113 and 102.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 3, 1993 (58 FR 12269).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 27, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Tennessee Valley Authority

Docket Nos. 50–327 and 50–328

Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee.

Date of application for amendments: May 18, 1994; revised September 9, 1994 (TS 94–05).

Brief description of amendments: The amendments revise the action statement to provide a fixed duration that the control room emergency ventilation system may be inoperable due to actions taken as a result of a tornado warning.

Date of issuance: October 17, 1994.

Effective date: October 17, 1994.

Amendment Nos.: 187 and 179.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register**: June 22, 1994 (59 FR 32237).

The Commission's related evaluation of the amendments are contained in a Safety Evaluation dated October 17, 1994.

No significant hazards consideration comments received: None.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority

Docket Nos. 50–327 and 50–328

Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee.

Date of application for amendments: August 19, 1994 (TS 93–09).

Brief description of amendments: The amendments delay implementation of Amendments Nos. 182 and 174 from the Unit 2 Cycle 6 refueling outage to as soon as acceptable plant conditions and modification activities/procedures are established in fiscal year 1995.

Date of issuance: October 17, 1994.

Effective date: October 17, 1994.

Amendment Nos.: 188 and 180.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register**: September 14, 1994 (59 FR 47182).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 17, 1994.

No significant hazards consideration comments received: None.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

No significant hazards consideration comments received: None.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority

Docket Nos. 50–327 and 50–328

Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee.

Date of application for amendments: September 8, 1994 (TS 94–14).

Brief description of amendments: The amendments incorporate clarifications regarding the evaluation of steam generator tube defects by separating the portion of the steam generator tube starting at the end of the tube up to the start of the tube-to-tube sheet weld from the remainder of the tube for the purposes of sample selection and repair when defects are found in this section of a steam generator tube.

Date of issuance: October 20, 1994.

Effective date: October 20, 1994.

Amendment Nos.: 189 and 181.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register**: September 19, 1994. (59 FR 47962).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 20, 1994.

No significant hazards consideration comments received: None.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company

Docket No. 50–346

Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio.

Date of application for amendment: April 5, 1994.

Brief description of amendment: The amendment increases the surveillance test interval for the turbine-driven auxiliary feedwater pump and motor-driven feedwater pump from 31 days to 92 days; clarifies a requirement for a dedicated individual to be stationed at manual valves during surveillance testing because of the availability of the motor-driven feedwater system; addresses miscellaneous editorial corrections, and revises TS 3/4.7.1.2 and TS 3/4.1.7 and their associated bases.

Date of issuance: October 18, 1994.

Effective date: October 18, 1994.

Amendment No.: 193.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: May 25, 1994 (59 FR 27068).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 18, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Union Electric Company

Docket No. 50–483

Callaway Plant, Unit 1, Callaway County, Missouri.

Date of application for amendment: February 10, 1994.

Brief description of amendment: The amendment revises the Technical Specification Table 2.2–1, "Reactor Trip System Instrumentation Trip Setpoints," to correct Total Allowance values. The associated Bases section clarifies the relationship between the power supply and undervoltage relays.

Date of issuance: October 27, 1994.

Effective date: Date of issuance to be implemented within 30 days.

Amendment No.: 93.

Facility Operating License No. NPF–30. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: March 30, 1994 (59 FR 14897).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 27, 1994.

No Significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Vermont Yankee Nuclear Power Corporation

Docket No. 50–271

Vermont Yankee Nuclear Power Station, Vernon, Vermont.

Date of application for amendment: December 6, 1993.

Brief description of amendment: The proposed change removes the requirement to perform jet pump

integrity and operability surveillances in the idle loop during operation with one recirculation loop.

Date of issuance: October 26, 1994.
Effective date: October 26, 1994.
Amendment No.: 141.
Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.
Date of initial notice in Federal Register: June 8, 1994 (59 FR 29637).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 26, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Virginia Electric and Power Company

Docket Nos. 50–280 and 50–281

Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.
Date of application for amendments: October 19, 1993.
Brief description of amendments: These amendments will add operability requirements, action statements, and surveillance requirements for the recirculation spray heat exchanger service water outlet radiation monitors. Also, surveillance requirements for several post-accident instruments are being reinstated.
Date of issuance: October 27, 1994.
Effective date: October 27, 1994.
Amendment Nos.: 193 and 193.
Facility Operating License Nos. DPR–32 and DPR–37: Amendments revised the Technical Specifications.
Date of initial notice in Federal Register: December 22, 1993 (58 FR 67864).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 27, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a Federal Register notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By December 9, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the

Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (*Project Director*): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Wisconsin Electric Power Company

Docket Nos. 50–266 and 50–301

Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin.

Date of application for amendments: October 20, 1994.

Brief description of amendments: These amendments revise Technical Specification (TS) Section 15.3.1.G, "Operational Limitations," to reduce the reactor coolant system raw measured total flow rate and operating pressure, modify TS Section 15.2.3.1.B to increase the required reduction in the delta-T trip setpoint, and modify TS Figure 15.2.1–1 to reflect new reactor core safety limits, all for Unit 2 only. The applicable bases are also revised.

Date of issuance: October 28, 1994.

Effective date: October 28, 1994.

Amendment Nos.: 156 and 160.

Facility Operating License Nos. DPR–24 and DPR–27. Amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendments, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated October 28, 1994.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Attorney for licensee: Ernest L. Blake, Jr., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

Acting NRC Project Director: Cynthia A. Carpenter.

Dated at Rockville, Maryland, this 2nd day of November, 1994.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–27613 Filed 11–8–94; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–361 and 50–362]

Southern California Edison Co., et al.; San Onofre Nuclear Generating Station Receipt of Petition For Director's Decision Under 10 CFR 2.206

Notice is hereby given that by Petition dated September 19, 1994, Mr. Richard M. Dean requested that the Nuclear Regulatory Commission (NRC) take action with regard to San Onofre Nuclear Generating Station (SONGS). Petitioner requests that the NRC use its own power to "shut-down" the operation of the SONGS facility based upon gross negligence by Southern California Edison in not having an "escape plan."

Petitioner asserts as a basis for this request that although originally Southern California Edison had a plan to evacuate the city residents of San Clemente in the event of an emergency at the SONGS facility, there is now no emergency plan. In addition, the

Petitioner also asserts that since last winter, a very large landslide permanently closed the Pacific Coast Highway at the Dana Point/San Clemente border, and since this highway was one of two exit routes out of the area, Southern California Edison now requests that, in the event of a nuclear emergency, all San Clemente residents should stay home.

The Petition has been referred to the Office of Nuclear Reactor Regulation pursuant to 10 CFR 2.206. As provided by Section 2.206, appropriate action will be taken with regard to the specific issues raised by the Petition in a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555–0001 and local public document room at the California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Rockville, Maryland this 28th day of October, 1994.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 94–27739 Filed 11–8–94; 8:45 am]

BILLING CODE 7590–01–M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide is temporarily identified as DG–1027, "Format and Content of Application for Approval for Thermal Annealing of Reactor Pressure Vessels," and is intended for Division 1, "Power Reactors." DG–1027 is being developed to describe a format and content acceptable to the NRC staff or the application to perform a thermal annealing of a reactor vessel. This guide also would describe acceptance criteria that the NRC staff would use in evaluating the applications to ensure that the annealing conditions imposed on the reactor and other equipment, components, and structures do not degrade the original design of the system.

This draft guide is being issued to involve the public in the early stages of the development of a regulatory position in this area. The draft guide has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the guide. Comments should be accompanied by supporting data. Written comments may be submitted to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by January 3, 1995.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Distribution and Mail Services Section. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

[5 U.S.C. 552(a)]

Dated at Rockville, Maryland, this 25th day of October, 1994.

For the Nuclear Regulatory Commission.

Lawrence C. Shao,

Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 94–27736 Filed 11–8–94; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Statement of Claimant or Other Person

(2) *Form(s) submitted:* G–93

(3) *OMB Number:* 3220–0183

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection

(6) *Frequency of response:* On occasion

(7) *Respondents:* Individuals or households, business or other for-profit

(8) *Estimated annual number of respondents:* 900

(9) *Total annual responses:* 900

(10) *Average time per response:* 0.25000 hours

(11) *Total annual reporting hours:* 225

(12) *Collection description:* Under Section 2 of the Railroad Retirement and the Railroad Unemployment Insurance Acts, pertinent information and proofs must be submitted by an applicant so that the Railroad Retirement Board can determine his or her entitlement to benefits. The collection obtains information supplementing or changing information previously provided by an applicant.

Additional Information or Comments

Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 94–27689 Filed 11–8–94; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (TSX Corporation, Common Stock, $0.01 Par Value) File No. 1–11814

November 3, 1994.

TSX Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, the Security has been listed for trading on the American Stock Exchange, Inc. ("Amex") since April 29, 1993, and has been listed for trading on the BSE since May 3, 1993. The Company believes that the cost of maintaining a listing on the BSE, in addition to the listing on the Amex, exceeds the benefits gained thereby.

Any interested person may, on or before November 25, 1994 submit by letter to the Secretary of the Securities and Exchange Commission 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27693 Filed 11–8–94; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Weatherford International Incorporated, Common Stock, $0.10 Par Value) File No. 1–7867

November 3, 1994.

Weatherford International Incorporated ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, the Security is listed on the New York Stock Exchange, Inc. ("NYSE"). The Security commenced trading on the NYSE at the opening of business on October 19, 1994 and concurrently therewith the Security was suspended from trading on the Amex.

In making the decision to withdraw the Security from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its securities on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of the Security and believes that dual listing would fragment the market for the Security.

Any interested person may, on or before November 24, 1994 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27694 Filed 11–8–94; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Action Performance Companies, Inc., Common Stock, $0.01 Par Value and Warrants Expiring April 27, 1998) File No. 1–11866

November 3, 1994.

Action Performance Companies, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities ("Securities") from listing and registration on the Pacific Stock Exchange, Inc. ("PSE").

The reasons alleged in the application for withdrawing the Securities from listing and registration include the following:

According to the Company, the Securities have been listed and traded on both the Exchange and the NASDAQ National Market System (NASDAQ/NMS) since the Company's April 1993 initial public offering of the Securities. Since April, 1993, the primary trading market for the Securities has developed on the NASDAQ/NMS. As a result, the officers and directors of the Company have determined that there is not sufficient trading volume on the Exchange to warrant the expenses involved with continued listing on both the Exchange and NASDAQ/NMS. The Company also find that multiple listing results in an unnecessarily burdensome duplication of filing documents with both the Exchange and NASDAQ whenever the Company makes any filing with the Commission.

Any interested person may, on or before November 25, 1994 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27695 Filed 11–8–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 20681; 812–8942]

The Woodward Funds; Notice of Application

November 2, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: The Woodward Funds (the "Trust").

RELEVANT ACT SECTIONS: Order requested under section 6(c) for an exemption from sections 13(a)(2), 13(a)(3), 17(a)(1), 18(f)(1), 22(f), and 22(g) of the Act and rule 2a–7 thereunder and under section 17(d) of the Act and rule 17d–1 thereunder permitting certain joint transactions.

SUMMARY OF APPLICATION: Applicant requests an order to permit it to offer new account allocation options under its deferred compensation plan for its trustees.

FILING DATE: The application was filed on April 14, 1994 and amended on July 25, 1994 and October 14, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 28, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, c/o NBD Bank, N.A., P.O. Box 7058, Troy, Michigan 48007.

FOR FURTHER INFORMATION CONTACT: Fran Pollack-Matz, Senior Attorney, (202) 942–0570, or Robert A. Robertson, Branch Chief, (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. The Trust is an open-end management investment company organized as a Massachusetts business trust that currently offers eighteen investment portfolio series. NBD Bank, N.A., a national banking association, serves as investment adviser, transfer agent and custodian for each of the Trust's series.

2. The Trust has seven trustees, a majority of whom are not "interested persons" of the Trust within the meaning of section 2(a)(19) of the Act. Each of the trustees, including the interested trustees, currently receives an annual fee of $6,000 plus an additional $1,000 for each board meeting attended. The amounts paid to the trustees are expected to continue to be insignificant in comparison to the total net assets of the Trust. Liability for payment of the trustee's fees is allocated equally among each of the Trust's series.

3. Under the Deferred Compensation Plan (the "Plan") now in effect, a trustee may defer all or a portion of the trustee's fees until a specified later date. All deferred amounts are credited with interest at the end of each month at the "average rate" earned on 90-day United States Treasury Bills.[1]

4. Under the proposed Plan, the trustees could allocate their deferred trustee's fees among all or some of the Trust's series, including any series created in the future, pursuant to a deferred compensation agreement (the "Agreement") executed by the trustee. Under the Agreement, the trustees may elect to defer receipt of their fees, to defer payment of income taxes on such fees, or for other reasons. Shares of the series selected by a trustee are hereinafter called "Underlying Securities."

5. Under each Agreement, deferred trustee's fees payable by the Trust are credited to an account on the books of the Trust at the time the trustee's fees would otherwise have been payable. A trustee's account will be credited or charged with book adjustments representing interest, dividends, and other earnings, gains, and losses that would have been realized if an amount equal to the account balance had been invested in accordance with the trustee's instructions. The value of a trustee's account on any day will be equal to the value it would have had, if the deferred fees credited to it had actually been invested, and all dividends and distributions reinvested, in the Underlying Securities as of the date the fees, dividends and distributions were credited.

6. The Trust's obligation to make payments of amounts accrued in the trustee's account will be a general unsecured obligation payable solely from the Trust's general assets and property. As a matter of prudent risk management, the Trust intends, and with respect to each of the money market series of the Trust that values its assets using the amortized cost method, undertakes to set aside amounts to cover its obligations under the proposed Plan by purchasing and maintaining the Underlying Securities selected by the trustees. The Trust is under no obligation to purchase, hold, or dispose of any investment, and if the Trust chooses to purchase investments to cover its obligations under the Plan, any and all such investments will remain part of the general assets and property of the Trust.

7. At the option of the trustees, deferred payments of fees may be made either in a lump sum or as annual payments over a period of 2–15 years. A trustee's election regarding the time and manner of distributions must be made when an Agreement is executed and may not be changed with respect to any year covered by that Agreement. If the services of a trustee are terminated, commencement of his/her annual payments may be triggered by the provisions of his/her Agreement, but the Trust does not have the right under the Plan to accelerate payment of deferred trustees fees into an immediate lump-sum distribution payable upon the trustee's termination. The trustee's benefits are not transferable or assignable except in the event of death.

8. The amounts paid to the trustees under the Plan are expected to be insignificant in comparison to the total net assets of the Trust. In addition, the proposed Plan will not obligate the Trust to retain a trustee in such capacity, nor will it obligate the Trust to pay any, or any particular level of, trustee's fees to any trustee.

Applicant's Legal Analysis

1. In connection with the adoption and implementation of the Plan, applicant requests an order under section 6(c) of the Act exempting the Trust from sections 13(a)(2), 13(a)(3), 17(a)(1), 18(f)(1), 22(f), and 22(g) of the Act and rule 2a–7 thereunder and under section 17(d) of the Act and rule 17d–1 thereunder to permit certain joint transactions. The order would permit the Trust to enter into deferred fee arrangements with certain of its trustees, and to effect transactions incident to those arrangements. Section 6(c) authorizes the SEC to exempt any person, security, or transaction from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the

[1] The SEC's Division of Investment Management has stated that it would not recommend that the Commission take any enforcement action under the Act if registered investment companies establish deferred compensations plans where the rate of return on the deferred compensation is based on the return on U.S. Treasury Bills. See, e.g., The North Carolina Management Trust (pub. avail. Jan. 23, 1992).

protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant believes that its proposal meets the section 6(c) standards.

2. Section 18(f)(1) prohibits a registered open-end investment company from issuing senior securities, except in connection with a bank borrowing. Section 13(a)(2) requires each registered investment company to obtain authorization by a vote of a majority of its outstanding voting securities before issuing any senior securities not contemplated by the recitals of policy contained in its registration statement.

3. Applicant contends that the Plan does not possess any of the characteristics of senior securities that led Congress to enact sections 18(f)(1) and 13(a)(2). The Trust will not be borrowing from its trustees in the sense that concerned Congress. All liabilities created by accruals under the Plan would be offset by essentially equal amounts of assets of the Trust that would not otherwise exist if the fees were paid on a current basis. The Plan would not induce speculative investments by the Trust or provide opportunity for manipulative allocation of the Trust's expenses and profits of any series; control of each Trust will not be affected; and the Plan will not confuse stockholders or convey a false impression of safety.

4. Section 13(a)(3) provides that no registered investment company shall, unless authorized by the vote of a majority of its outstanding voting securities, deviate from any investment policy that is changeable only if authorized by shareholder vote. Three of the series have limitations on their ability to purchase securities issued by other investment companies. Applicant believes it is appropriate to exempt these three series from section 13(a)(3) to allow them to invest in affiliated investment companies without a shareholder vote. The value of the Underlying Securities will be *de minimis* compared to the total net assets of the respective series and will at all times equal the value of such series' obligation to pay deferred fees. Changes in the value of the Underlying Securities will not affect the value of shareholders' investments. Thus, permitting the series to invest in Underlying Securities without obtaining the shareholder approval required by section 13(a)(3) would result in no harm to shareholders.

5. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or any affiliated person of such person, from selling any security to such registered investment company. Applicant submits that the sale of securities issued by the Trust's series under the Plan does not implicate Congress' concerns in enacting section 17, but merely facilitates the matching of the Trust's liability (and each series' derivative liability) for the deferred trustee's fees with the securities that determine the amount of that liability (and such derivative ability).

6. Section 17(d) and rule 17d–1 thereunder prohibit an affiliated person of a registered investment company, acting as principal, from participating in, or effecting any transactions in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which such registered company is a participant, without prior receipt of an order of the SEC. The effect of the Plan is to defer the payment of fees that the Trust otherwise would be obligated to pay on a current basis as services are performed by the trustees. Liabilities created by the accruals under the agreement will be offset by essentially equal amounts of assets consisting of Trust shares.

7. Section 22(f) prohibits undisclosed restrictions on transferability or negotiability of redeemable securities issued by open-end investment companies. The restrictions under the Plan are clearly set forth in the Plan and do not adversely affect the interests of the trustees or of any Trust shareholders.

8. Section 22(g) generally prohibits an open-end investment company from issuing any of its securities for services or for property other than cash or securities. The Plan provides for deferred payment of fees and thus, the Agreement should not be viewed as being issued in return for services, but in return for the Trust not being required to pay such fees on a current basis.

9. Rule 2a–7 requires a registered investment company to limit its portfolio to securities meeting certain standards of maturity, quality, and diversification. The rule also contains a number of conditions designed to reduce the likelihood that the net asset value of a money market fund as determined by the amortized cost method will deviate materially from its net asset value as determined by the mark-to-market method. Any money market series that values its assets using the amortized cost method will buy and hold Underlying Securities to achieve an exact match between such series' liability to pay deferred fees and the assets that liability. This would ensure that the deferred fee arrangements will not affect the net asset value of the money market series.

Applicant's Conditions

1. With respect to the requested relief from rule 2a–7, for any money market series that values its assets using the amortized cost method, the Trust will (a) buy and hold the securities that determine performance of the deferred compensation plan to achieve an exact match between such series' liability to pay deferred fees and the assets that offset that liability and (b) allocate such securities to each money market series.

2. If the Trust purchases Underlying Securities issued by an affiliated series, the Trust will vote such shares in proportion to the votes of all other holders of shares of such affiliated series.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27698 Filed 11–8–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 20685; 811–3780]

PMC Capital, Inc.; Notice of Proposed Deregistration

November 3, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of proposed deregistration under the Investment Company Act of 1940 (the "Act").

RELEVANT ACT SECTIONS: Sections 8(f) and 54(a).

SUMMARY OF NOTICE: The SEC proposes to declare by order on its own motion that PMC Capital, Inc. ("PMC") ceased to be an investment company when it elected on June 7, 1994 to be regulated as a business development company ("BDC") pursuant to section 54(a) of the Act.

HEARING OR NOTIFICATION OF HEARING: An order of deregistration will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary. Hearing requests should be received by the SEC by 5:30 p.m. on November 28, 1994. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Law Clerk, at

(202) 942–0562, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

Statement of Facts

1. PMC is a registered, closed-end, diversified, management investment company. On June 24, 1993, PMC filed a Notification of Registration on form N–8A pursuant to section 8(a) of the Act and a registration statement on form N–1A under section 8(b) of the Act. On June 28, 1983, PMC filed a registration statement under the Securities Act of 1933. The registration statement became effective on November 23, 1993.

2. PMC is organized as a corporation under the laws of the state of Florida and has its principal place of business in the state of Texas.

3. Section 54(a) of the Act provides that any company that satisfies the definition of a BDC under section 2(a)(48)(A) and (B) may elect to be subject to the provisions of sections 55 through 65 and be regulated as a BDC by filing with the SEC a notification of such election, if such company: (i) has a class of its equity securities registered under section 12 of the Securities Exchange Act of 1934 (the "'Exchange Act"); or (i) has filed a registration statement pursuant to section 12 of the Exchange Act for a class of its equity securities.

4. On June 7, 1994, PMC elected BDC status by filing a form N–54A.

5. Section 8(f) of the Act permits the SEC to deregister a registered investment company on its own motion if it finds that the company has ceased to be an investment company.

6. Section 8 of the Act, requiring registration of investment companies, does not apply to BDCs. After an existing registered investment company has filed an election to be regulated as a BDC, the SEC on its own motion will declare by order under section 8(f) that the company's registration under the Act has ceased to be in effect. Such an order will be made effective retroactively, as of the time the SEC received the company's election.[1]

7. The SEC finds that PMC ceased to be a registered investment company on June 7, 1994.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27755 Filed 11–8–94; 8:45 am]

BILLING CODE 8010–01–M

[1] Investment Company Act Release No. 11703 (Mar. 26, 1981).

[Investment Company Act Release No 20680; 811–903]

Jupiter National, Inc.; Notice of Proposed Deregistration

November 2, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Proposed Deregistration under the Investment Company Act of 1940 (the "Act").

RELEVANT ACT SECTIONS: Sections 8(f) and 54(a).

SUMMARY OF NOTICE: The SEC proposes to declare by order on its own motion that Jupiter National, Inc. ("Jupiter") ceased to be an investment company when it elected on February 6, 1987 to be regulated as a business development company ("BDC") pursuant to section 54(a) of the Act.

HEARING OR NOTIFICATION OF HEARING: An order of deregistration will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary. Hearing requests should be received by the SEC by 5:30 p.m. on November 28, 1994. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Law Clerk, at (202) 942–0562, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

Statement of Facts

1. Jupiter is a registered, closed-end, non-diversified, management investment company. On September 2, 1959, Jupiter filed a Notification of Registration on form N–8A pursuant to section 8(a) of the Act and a registration statement on form N–1A under section 8(b) of the Act. On December 20, 1968, Jupiter filed a registration statement under the Securities Act of 1933. The registration statement became effective on February 14, 1969.

2. Jupiter is organized as a corporation under the laws of the state of Delaware and has its principal place of business in the District of Columbia.

3. Section 54(a) of the Act provides that any company that satisfies the definition of a BDC under section 2(a)(48)(A) and (B) may elect to be subject to the provisions of section 55 through 65 and be regulated as a BDC by filing with the SEC a notification of such election, if such company: (i) has a class of its equity securities registered under section 12 of the Securities Exchange Act of 1934 (the "Exchange Act"); or (ii) has filed a registration statement pursuant to section 12 of the Exchange Act for a class of its equity securities.

4. On October 9, 1981, Jupiter elected BDC status by filing a form N–54A. On December 23, 1983, Jupiter withdrew its election of BDC status by filing a form N–54C. On February 6, 1987 Jupiter again elected BDC status and filed a form N–54A.[1]

5. Section 8(f) of the Act permits the SEC to deregister a registered investment company on its own motion if it finds that the company has ceased to be an investment company.

6. Section 8 of the Act, requiring registration of investment companies, does not apply to BDCs. After an existing registered investment company has filed an election to be regulated as a BDC, the SEC on its own motion will declare by order under section 8(f) that the company's registration under the Act has ceased to be in effect. Such an order will be made effective retroactively, as of the time the SEC received the company's election.[2]

7. The SEC finds that Jupiter ceased to be a registered investment company on February 6, 1987.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27699 Filed 11–8–94; 8:45 am]

BILLING CODE 8010–01–M

[1] On January 7, 1988, due to a reorganization from the District of Columbia to Delaware, Jupiter filed a form N–54C to withdraw its election of BDC status as a District of Columbia corporation and simultaneously filed a form N–54A to elect BDC status as a Delaware corporation.

[2] Investment Company Act Release No. 11703 (Mar. 26, 1981).

[Rel. No. 34–34928; File No. SR–NASD–94–48]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Amending Certain Current Terms and Adopting New Terms Relating to the NASDAQ System That Are Used in Schedule D to the NASD By-Laws and Other Parts of the NASD's Rules and Regulations That Are Contained in the NASD Manual

November 2, 1994.

On September 20, 1994, the National Association of Securities Dealers, Inc.

("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change [1] pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [2] and Rule 19b–4 thereunder.[3] The NASD proposes to amend certain current terms and adopt new terms related to the NASDAQ System that more appropriately describe the current technological facilities and services provided by this securities market throughout Schedule D to the NASD By-Laws ("Schedule D") and other parts of the NASD's rules and regulations in the NASD Manual.

Under the proposal, new nomenclature will be utilized and defined. For example, "The Nasdaq Stock Market" will replace the phrase "the NASDAQ System." The Nasdaq Stock Market will be defined as an electronic securities market comprised of competing market makers whose trading is supported by a communications network linking them to quotation dissemination, trade reporting, and order execution systems. Further, it will be noted that The Nasdaq Stock Market provides specialized automation services for screen-based negotiations of transactions, on-line comparison of transactions, and a range of informational services tailored to the needs of the securities industry, investors and issuers. The proposal will clarify that The Nasdaq Stock Market consists of two distinct tiers. The first tier will be labeled "The Nasdaq SmallCap Market" or "SCM" and the second tier will be labeled the "Nasdaq National Market" or "NNM". Securities included for quotation in these two tiers will be labelled "Nasdaq Small Cap Market Securities" or "SCM securities" and "Nasdaq National Market securities" or "NNM securities," respectively.

Notice of the proposed rule change, as amended, together with its terms of substance, was provided by issuance of a Commission release [4] and by publication in the **Federal Register**.[5] No comments were received in response to the notice. This order approves the proposed rule change.

The Commission has determined to approve the NASD's proposal. The Commission finds that the rule change is consistent with the requirement of the Act and the rules and regulations thereunder applicable to the NASD, including the requirements of Section 15A(b)(6) of the Act.[6] Section 15A(b)(6) requires, among other things, that the rules of a national securities association be designed to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change is consistent in that the proposed new terms will indicate more clearly the current operation of the system as a market for securities with quotation dissemination, trade reporting, order execution capability, screen-based negotiation of transactions, on-line comparison of transactions, and informational services. The proposed new terms will also clarify that the market is composed of two distinct market tiers, each with different inclusion criteria that are set forth in different parts of Schedule D. Further, the proposed rule change will make clear that The Nasdaq Stock Market is operated by The Nasdaq Stock Market, Inc., a wholly-owned subsidiary of the Association.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–NASD–94–48 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27697 Filed 11–8–94; 8:45 am]

BILLING CODE 8010–01–M

[1] The NASD amended the proposed rule change subsequent to the original filing on August 23, 1994.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] Securities Exchange Act Rel. No. 34743 (September 28, 1994).

[5] 59 FR 50784 (October 5, 1994).

[6] 15 U.S.C. 78o–3(b)(6).

[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 94–097]

Review of Icebreaking Resource Requirements in the Great Lakes

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: The Coast Guard is conducting a review of icebreaking requirements in the Great Lakes and is seeking public comment. It may also hold a public meeting to provide additional opportunity for public input. The Coast Guard currently provides icebreaking services in the Great Lakes to support maritime commerce, respond to urgent search and rescue and other emergency situations, and to prevent flooding caused by ice. It is interested in continuing to provide the appropriate level of icebreaking services, while also seeking to reduce costs.

DATES: Comments must be received on or before, January 9, 1995.

ADDRESSES: Written comments may be mailed to the Chief, Ice Operations Division, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 1202A at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1450.

FOR FURTHER INFORMATION CONTACT: LCDR Robert Garrett, Icebreaker Facilities Branch, Ice Operations Division, Office of Navigation Safety and Waterway Services. Telephone (202) 267–1460, telefax (202) 267–4425. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: If it receives indication of sufficient interest, the Coast Guard may hold a public meeting to discuss its plan to provide icebreaking services in the Great Lakes, and to obtain input from the shipping community and general public on the needs and benefits of icebreaking services. The most likely site for a meeting would be Sault Ste. Marie, Michigan. Such a meeting would be announced by separate notice published in the **Federal Register**. The Coast Guard is interested in providing the appropriate level of icebreaking services to the maritime community in the Great Lakes, while seeking to reduce costs. It specifically solicits comments on whether or not it should hold a public meeting.

Background and Purpose

The Coast Guard currently provides icebreaking services within the United States to support the reasonable demands of commerce, respond to urgent search and rescue and other emergency situations, and to prevent flooding caused by ice.

Executive Order 7521 (December 21, 1936) directs the Coast Guard domestic ice operations program to "assist in keeping open to navigation by means of icebreaking operations * * * channels and harbors in accordance with the reasonable demands of commerce * * *."

The U.S. Army Corps of Engineers has the responsibility for flood control and determines if icebreaking will assist in the regulation and operation of an affected waterway. Upon request of the appropriate Corps of Engineers

authority, the Coast Guard may, pursuant to 14 U.S.C. 141(a) and 14 U.S.C. 88(a), provide ice management facilities and services to aid in the prevention of floods and hazardous water stages caused by ice obstructions. The Coast Guard may also provide ice management facilities and services for flood control in response to requests from other Federal, State, or local governmental agencies or private interests, after appropriate consultations with the Corps of Engineers. Icebreaking for flood control is conducted to the extent Coast Guard resources are available and can be effectively used.

Request for Comments

The Coast Guard solicits comments from all segments of the Great Lakes maritime community on their reasonable requirements for icebreaking services. Persons submitting comments should include their name and address, identify this docket (CGD 94–097), identify the aspect of icebreaking operations on which comments are submitted, and state the expected impacts on current icebreaking operations and the reasons for those impacts. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard is particularly interested in receiving views, data, and reasons on the following review questions regarding two hypothetical scenarios of available icebreaking services in the Great Lakes. These scenarios do not indicate any future proposed level of service for Coast Guard icebreaking resources, but are designed to determine the total economic costs and benefits associated with icebreaking support.

- *Scenario One*—Limited Coast Guard icebreaking services would be available in the Great Lakes, but due to the severe ice conditions, would generally not permit any degree of certainty for planning vessel transits. Some ports may be inaccessible and some routes impassable for extended periods.
- *Scenario Two*—Coast Guard icebreaking services would be available in the Great Lakes but, on average, transit in ice conditions would generally take twice as long as when there is no ice. Most ports and routes would remain open, but may be temporarily closed due to ice conditions.

—Compared to your typical level of lake shipping during this period, would your shipping decrease under either scenario, and, if so, by approximately what percentage?

—Assess the impact of each scenario on your operations. Would either force you to significantly change your business operations?

—Would the changes to your business operations associated with either scenario affect your costs? Explain the effects and estimate the applicable costs as best as possible, including lost plant revenue, additional shipping costs (rail, truck, or increased shipping during non-ice season), increased inventory costs, or increased warehouse/storage facility costs, additional material handling costs, additional interest costs, additional inventory tax liabilities, or other relevant costs.

—What other considerations are relevant to your business or interests?

—Consider any environmental issues of each scenario. Explain any additional impacts from increased truck or rail shipping during the ice season.

All comments received by the Coast Guard as a result of this notice will be summarized for consideration prior to any public meeting and will also be included in the analysis of icebreaking requirements in the Great Lakes. The Coast Guard will consider all relevant comments in the formulation of any changes to its domestic ice operations program.

Dated: November 3, 1994.

G.A. Penington,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Service.

[FR Doc. 94–27760 Filed 11–8–94; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL RAILROAD ADMINISTRATION

Notice of Revision to Submission Deadline for Grant Applications for Next Generation High-Speed Rail Program: Demonstration of High Speed Positive Train Control System (HSPTC)

AGENCY: Federal Railroad Administration; Department of Transportation.

ACTION: Notice.

SUMMARY: In **Federal Register** Notice Vol. 59, No. 173, 46470, dated September 8, 1994, the FRA encouraged interested parties to attend a public, pre-application forum relating to grant(s) anticipated to be awarded as a result of the Next Generation High-Speed Rail Program, Demonstration of High Speed Positive Train Control System (HSPTC) ("Program") to demonstrate advanced train control technology that can contribute to more effective train control systems for emerging high-speed passenger rail corridors in the United States. Eligible applicants were informed of the opportunity to submit applications for funding to demonstrate an advanced positive train control system for high-speed passenger rail service on a mixed passenger and freight corridor. At the time of the pre-application forum held October 6, 1994, the application deadline was set at November 30, 1994.

REVISED DEADLINE FOR SUBMISSION OF APPLICATIONS: The deadline for submission of applications is hereby revised to the close of business, Friday, January 6, 1995.

ADDRESS FOR SUBMISSION OF APPLICATIONS: Applicants are requested to submit an original and six (6) copies of their applications to Federal Railroad Administration, Attention: Robert L. Carpenter, Office of Acquisition and Grants Services (RAD–30), Federal Railroad Administration, 400 Seventh Street, S.W., Room 8222, Washington, DC 20590.

FOR FURTHER TECHNICAL INFORMATION CONTACT: Robert J. McCown, Acting Director, Technology Development Programs, Office of Railroad Development (RDV–30), Federal Railroad Administration, 400 Seventh Street, S.W., Washington, DC 20590. Phone: (202) 366–0462; Fax: (202) 366–7150.

AUTHORITY: The authority for the Program can be found in Section 1036(c)(1)(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (49 U.S.C. 309(b)), and the Department of Transportation and Related Agencies Appropriations Act for fiscal year 1995 (beginning October 1, 1994). The Secretary's responsibilities under this program will be administered by the Federal Railroad Administration (FRA).

MISCELLANEOUS: Prospective applicants that have not previously received a copy of the application packet released at the pre-application forum or mailed thereafter, may request a copy of the application by contacting either Mr. McCown or Mr. Carpenter. Except as provided herein, all other conditions and requirements of the application and application process remain unchanged.

Dated: November 3, 1994.

James T. McQueen,

Associate Administrator for Railroad Development.

[FR Doc. 94–27732 Filed 11–8–94; 8:45 am]

BILLING CODE [illegible]

Sunshine Act Meetings

Federal Register
Vol. 59, No.-216
Wednesday, November 9, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

UNITED STATES DEPARTMENT OF AGRICULTURE

RURAL TELEPHONE BANK, USDA

Staff Briefing for the Board of Directors.

TIME AND DATES: 2 p.m., Tuesday, November 15, 1994.

PLACE: Room 0305, South Building, Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED: General discussion involving privatization planning including reviewing a draft Request for Proposals for a financial advisor. Also discussion concerning the November 1 election results and general loan program business.

ACTION: Regular Meeting of the Board of Directors.

TIME AND DATES: 10 a.m., Wednesday, November 16, 1994.

PLACE: Jefferson Auditorium, South Building, Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to Order.
2. Swearing in newly elected Board members.
3. Approval of Minutes of the August 11, 1994, Board meeting.
4. Report on loans approved in the fourth quarter of FY 1994.
5. Summary of fourth quarter FY 1994 financial activity.
6. Report of ad hoc committee on privatization of the RTB.
7. Consideration of draft scope and objective for the Request for Proposals to assess the privatization of the Rural Telephone Bank.
8. Election of Board Officers: Chairperson, Vice Chairperson, Secretary, and Treasurer.
9. Establish date and location of next regular Board meeting.
10. Adjournment.

ACTION: 11th Biennial Stockholders Meeting.

TIME AND DATE: Following the Board of Directors Meeting (time approximate, 11 a.m.), Wednesday, November 16, 1994.

PLACE: Jefferson Auditorium, South Building, Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the stockholders meeting:

1. Call to Order.
2. Establishment of a quorum of stockholders.
3. Approval of Minutes of the March 24, 1993, stockholders meeting.
4. Secretary's annual report on loans approved in FY 1993 and FY 1994.
5. Treasurer's annual report for FY 1993 and FY 1994.
6. Annual committee report on privatization of the RTB.
7. Annual committee report on prepayments.
8. New Business.
9. Adjournment.

Registration for the stockholders meeting.

(a) Voting Representatives may register on Tuesday, November 15, the day before the meeting, between 1–4 p.m. in Room 2832, South Building, USDA; or

(b) Wednesday, November 16, between 9–11 a.m. at the entrance to the Jefferson Auditorium.

CONTACT PERSON FOR MORE INFORMATION: Matthew P. Link, Assistant Secretary, Rural Telephone Bank (202) 720–0530.

Dated: November 4, 1994.

Wally Beyer,

Governor, Rural Telephone Bank.

[FR Doc. 94–27818 Filed 11–7–94; 8:45 am]

BILLING CODE 3410–15–P

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, November 22, 1994.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A Webb,

Secretary of the Commission.

[FR Doc. 94–27855 Filed 11–7–94; 10:48 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, November 30, 1994.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–27856 Filed 11–7–94; 10:48 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Wednesday, November 30, 1994.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–27857–Filed 11–7–94; 10:48 am]

BILLING CODE 6351–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 12:00 noon, Monday, November 14, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 4, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–27858 Filed 11–7–4; 11:06 am]

BILLING CODE 6210–1–P

NATIONAL SCIENCE FOUNDATION

NATIONAL SCIENCE BOARD

DATE AND TIME:

November 18, 1994—7:30 a.m.—Closed Session

November 18, 1994—8:30 a.m.—Open Session

PLACE: National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, Virginia 22230.

STATUS:

Part of this meeting will be open to the public.

Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Friday, November 18, 1994

Closed Session (7:30 a.m.–8:30 a.m.)
- —Minutes from October Meeting
- —Grants and Contracts

Open Session (8:30 a.m.–9:30 a.m.)
- —Minutes from October Meeting
- —Chairman's Report
- —Director's Report
- —Committee Reports
- —Other Business/Adjourn

Marta Cehelsky,

Executive Officer.

[FR Doc. 94–27846 Filed 11–7–94; 9:54 am]

BILLING CODE 7555–01–M

RAILROAD RETIREMENT BOARD

Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on November 15, 1994, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

Portion Open to the Public

(1) Proposal to Close the Springfield, MA Base Point Office
(2) Revision to Board Order 75–3, Section XIX, Agency Grievance Procedure
(3) Reengineering Initiative—Initial Plan
(4) Management of the Payment, Rate and Entitlement History (PREH) Project
(5) Pending Legislative Issues:
- A. H.R. 4277 and H.R. 4278—Amendments to Conform RRA to SSA
- B. Draft Legislative Language to Preclude Payment of Annuities, Tier I, tier II, & Supplemental, to Incarcerated Felons, Criminally Insane, etc.
- C. Legislative Proposals for the Fiscal Year 1996 Budget Submission
- D. Draft Bill Embodying Legislative Proposals for 2nd Session of 103rd Congress
- E. Disclosure of Tax Return Information

(6) Ethics issues:
- A. Frequent Traveler Programs
- B. Agency Designee for Determination Agency Interest in Acceptance of Free Attendance at Certain Meetings

(7) Proposed Revision to Incentive Awards Plan
(8) Filling Supervisory and Managerial GS–13 through GS–15 Vacancies
(9) Medicare Transaction System (MTS) Issue
(10) Plan to Improve the Quality and Timeliness of Claims Processing (BUSI)
(11) Cost-Saving Concepts
(12) Waiver of Contributions:
- A. Ellis & Eastern Company
- B. Employee Status Determination (Roth A. Gatewood)
- C. Timeline of Key Events and Contributions, Interest, and Penalties Due from Livingston Rebuild Center, Inc.

(13) Coverage Determinations:
- A. Marietta Industrial Enterprises, Inc.
- B. Great Southern Contracting, Inc.
- C. Pacific Standard Corporation—Request for Reconsideration of Employer Status
- D. Herzog Transit Services, Inc.
- E. Appeal of Border Pacific Railroad Company
- F. Appeal of National Railway System, Inc.

(14) Railroad Retirements Board Correspondence Manual
(15) Regulations:
- A. Parts 202 and 301, Employers Under the Rairoad Retirement Act and Railroad Unemployment Insurance Act
- B. Part 203, Employees Under the Railroad Retirement Act
- C. Part 220, Disability
- D. Part 226, Computing, Employee Spouse and Divorced Spouse Annuities
- E. Part 228 and 237, Computation of Survivor Annuities
- F. Part 230, Reduction and Non-Payment of Annuities by Reason of Work
- G. Part 225, Recovery of Overpayments
- H. Part 320, Initial Determinations under RUIA and Reviews and Appeals from Such Determinations
- I. Part 328, Voluntary Leaving of Work
- J. Part 345, Contribution and Contribution Reports—

(1) Policy for Considering the Waiver of Interest and/or Penalty Assessments for Railroad Employers
(16) Labor-Management Partnership—Management Member Kever's Memorandum of October 11, 1994, and Related Issues
(17) Reorganization Memos: Mr. Kever's of October 26; Mr. Bower's of November 1, and Mr. Speakman's of November 2, 1994.
(18) Field Service Issues:
- A. Field Migration Schedule
- B. Recommendations Concerning the Function and Structure of the Field Service
- C. Base Point Office Study

(19) Fiscal Year 1994 Performance Appraisal Plans

Portion Closed to the Public

(A) Acting Director of Office of Retirement and Survivor Benefits
(B) Restructuring of the Washington Legislative Liaison Office (Abolishment of GS–4 Ofc. Automation Clerk Position & Establishment of GS–7, Ofc. Asst. Position)
(C) Vacancy Announcement for Facility Manager Position
(D) Pending Board Appeals:
1. Lila Church Settlement Offer
2. Amsk, Michael P.
3. Barron, Wiley W.
4. Baumgardner, Susan J.
5. Beahm, Winston G.
6. Benbow, Philip K.
7. Coburn, Jr., Joe
8. Deni, Margaret E.
9. Grissom, Marcella
10. Harrison, Robert T.
11. Hunn, James L.
12. King, Mary J.
13. Kline, Woodrow C.
14. Land, Doris L.
15. L'Heureux, Authur/Dorothy
16. Price, Edward H.
17. Puffinbarger, Larry D.
18. Quick, Jr., Edwin B.
19. Watts, Gloria

The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: November 4, 1994.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 94–27845 Filed 11–7–94; 9:55 am]

BILLING CODE 7905–01–M

Corrections

Federal Register
Vol. 59, No. 216
Wednesday, November 9, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS No. 1451-93]
RIN 1115-AC72

Temporary Alien Workers Seeking H-1B, O, and P Classifications Under the Immigration and Nationality Act

Correction

In rule document 94-16674 beginning on page 41818 in the issue of Monday, August 15, 1994, make the following corrections:

§ 214.2 [Corrected]

In § 214.2:

1. On page 41835, in the second column, in paragraph (o)(8)(ii), in the last line, "practitioner" should read "petitioner".

2. On page 41837, in the third column, in paragraph (p)(3), in the definition for *Competition, event, or performance*, in the last line, "lien's" should read "alien's".

3. On page 41840, in the first column, after paragraph (p)(7)(i)(A), insert the following:

"(B) Except as provided in paragraph (p)(7)(i)(E) of this section, evidence of consultation shall be a written advisory opinion from an appropriate labor organization."

4. On page 41841, in the first column, in the first line, the paragraph designation "(i)" should read "(8)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Office of the Under Secretary for Domestic Finance

17 CFR Part 405

RIN 1505-AA48

Implementing Regulations for the Government Securities Act of 1986

Correction

In rule document 94-26545 beginning on page 53728 in the issue of Wednesday, October 26, 1994, make the following correction:

§ 405.3 [Corrected]

On page 53731, in the second column, in § 405.3, in paragraph (c)(5), in the paragraph designated (B), in the second line, "finds" should read "funds".

BILLING CODE 1505-01-D

federal register

Wednesday
November 9, 1994

Part II

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone; Refrigerant Recycling; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–5101–8]

RIN 2060–AF05

Protection of Stratospheric Ozone; Refrigerant Recycling

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending the rules on refrigerant recycling promulgated under section 608 of the Clean Air Act to clarify the conditions under which technician certification programs will be grandfathered, allowing technicians who had participated in voluntary technician training and certification programs prior to the publication of the rule to receive formal certification. EPA is also amending the rule to clarify the scope of the technician certification requirement and to provide a limited exemption from certification requirements for apprentices.

EFFECTIVE DATE: October 28, 1994.

ADDRESSES: Materials relevant to the rulemaking are contained in Air Docket No. A–92–01 at: Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. The Air and Radiation Docket and Information Center is located in room M–1500, Waterside Mall (Ground Floor) Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Dockets may be inspected from 8:00 a.m. to 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Debbie Ottinger, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street, S.W., Washington, D.C. 20460 (202–233–9200). The Stratospheric Ozone Information Hotline at 1–800–296–1996 can also be contacted for further information.

SUPPLEMENTARY INFORMATION:

I. Background

Final regulations published on May 14, 1993 (58 *FR* 28660) establish a recycling program for ozone-depleting refrigerants recovered during the servicing and disposal of air-conditioning and refrigeration equipment. The regulations require technicians to observe practices that minimize release of refrigerant to the environment. To ensure that technicians become knowledgeable of these requirements, § 82.161 of the final rule mandates that technicians be certified by passing a test. For Type II, Type III, and Universal technicians, the test must be a closed-book, proctored examination drawn from a bank of test questions kept by the Environmental Protection Agency (EPA) and administered in a secure environment by an EPA-approved certifying program. For Type I technicians, a mail-in program is permitted. Testing and training organizations can apply to EPA to become EPA-approved technician certifiers under § 82.161(c) by demonstrating that they can ensure test security, provide an adequate number of proctors during the examination, select questions randomly from the appropriate sections of the test bank, and provide proof of certification to technicians who pass the exams. Testing and training organizations must also demonstrate that they grade objectively and keep adequate records. The specific requirements of the program are presented in § 82.161 and appendix D of the final rule. To date, EPA has authorized over 90 organizations as technician certifying organizations.

II. This Action

A. Grandfathering

Under § 82.161(g), organizations that seek approval as certifying organizations can also apply to grandfather technicians who received training and testing under programs established prior to publication of the final rule in May 1993, which established the approval process for certification programs. Specifically, § 82.161(g) states:

> Persons seeking approval of a technician certification program may also seek approval for technician certifications granted previously under the program. Interested persons may submit to the Administrator at the address in § 82.160(a) verification that the program met all of the standards of § 82.161(c) and appendix D, * * * except for some elements of the test subject material, in which case the person must submit verification that supplementary information on that material will be provided pursuant to appendix D, section (j).

When EPA initially drafted the language requiring programs to meet "all of the standards of § 82.161(c) and appendix D," these standards were considerably more general than those that were ultimately incorporated into the rule. The proposal had discussed possible requirements in broad terms. For instance, although the proposal anticipated that tests would be proctored, it did not suggest a specific ratio of proctors to examinees, such as the 1:50 ratio that appeared in the final rule. Similarly, the proposal did not specify whether tests would be open- or closed-book. Instead, the proposal included general requirements that tests be proctored, that test security measures be in place, and that tests be graded objectively. EPA believed that many voluntary programs would meet these general requirements.

In response to comments, the requirements for certifying organizations grew more specific. EPA believed that increasing the specificity of the standards strengthened the technician certification program overall. However, EPA did not thoroughly reevaluate and revise its grandfathering provision to reflect the new, detailed requirements. Instead, the provision inappropriately continued to allow voluntary programs to be grandfathered only if they meet all the requirements of § 82.161(c) and appendix D, with a limited exemption concerning test subject material.

The Agency recognizes that if voluntary programs were held to each of the detailed standards, no voluntary technician certification program could be grandfathered. Appendix D contains the specific requirements of the technician certification program. Voluntary programs prior to the promulgation of the final rule could not have complied with these requirements, as they were not yet in existence. Section (a) (Test Preparation) of appendix D requires that "[e]ach certifying program must assemble tests by choosing a prescribed subset from the EPA test bank." However, the test bank did not become available until September 30, 1993. In addition, EPA requires programs to certify technicians with Type I, Type II, or Type III certifications, depending on the level of the test passed by the technician. EPA developed these categories after the close of the public comment period to the proposed rule. However, other logical categorization systems are possible, and until EPA promulgated the final rule, many technician certification organizations categorized technician types differently. Furthermore, section (a) requires a closed-book test, yet most testing organizations prior to the final rule offered only open-book tests. Finally, appendix D defines the ratio of technicians to proctors, and establishes recordkeeping and reporting requirements, all requirements that organizations certainly could not have complied with prior to the promulgation of the final rule.

Nevertheless, many voluntary programs substantially complied with

most of the standards of appendix D, even though they used alternative procedures to those eventually specified in appendix D. Thus, many programs did proctor tests (at least the equivalent of Type II, Type III, and Universal tests), ensure test security, objectively grade tests, and keep records. Several programs also covered most of the required subject matter in the core and at least some technical sections, even when they did not establish the same categories in their testing as were established in the final rule (Type I, II, etc.). Where the content of their voluntary testing fell short of that required by the final rule, programs expressed their willingness to provide additional testing and training as needed, and the final rule provided for this remedy.

EPA has always intended to grandfather these reasonably stringent programs. The purposes of the technician certification requirement are discussed fully in the preamble to the rule establishing the program (58 FR 28660, May 14, 1993). A primary goal of the requirement is to guarantee that technicians who handle refrigerants understand and practice safe refrigerant recovery and recycling techniques. Proper handling will minimize release of refrigerants to the atmosphere and the accompanying environmental harm.

In promulgating the certification provision, EPA determined that grandfathering reasonably stringent voluntary certification programs would significantly further the goals of the certification requirement in a number of ways. By training and testing technicians in recycling refrigerants before the rule was promulgated (on May 14, 1993), reasonably stringent voluntary programs prepared technicians to comply with the prohibition on venting that became effective on July 1, 1992, and probably significantly reduced refrigerant emissions. These programs also served as an impetus for developing a mandatory program, providing a model for that program. Indeed, EPA worked with several voluntary programs to develop the requirements of the mandatory program. In addition, many voluntary organizations provided questions for the test bank, determining the scope of the training and the current exam. Finally, EPA does not want to discourage future participation in voluntary environmental training. Requiring repeat testing for all technicians who voluntarily took adequate testing and training could discourage people from participating in future voluntary programs.

Any potential harm from grandfathering would arise from certifying some technicians on the basis of their participation in testing programs that unavoidably deviated from some of the specific requirements in appendix D. However, EPA will only grandfather those programs that substantially complied with most of the certification standards, and therefore largely achieved the basic goal of the certification requirement, to ensure that technicians understand proper refrigerant handling practices and the importance of such practices. In addition, a program can address any gaps in its coverage by providing supplementary information. Given substantial compliance and supplementary information, the marginal benefits derived from retesting would be relatively small. Moreover, such benefits must be compared to the burden of requiring retesting. Over 100,000 technicians participated in voluntary programs. Retesting would require almost all of these technicians to incur costs for time, travel and test administration. In light of the significant benefits and small potential harm expected from grandfathering reasonably stringent voluntary programs, EPA is modifying the requirements for grandfathering to ensure that an Agency drafting error does not disqualify these programs outright.

To carry out this intent, EPA today is amending the grandfathering provision of § 82.161(g) as the Agency proposed in the August 15, 1994 **Federal Register** notice (59 FR 41968). This paragraph currently states that "[i]nterested persons may submit to the Administrator at the address in § 82.160(a) verification that the program met all of the standards of § 82.161(c) and appendix D, or verification that the program met *all* of the standards of § 82.161(c) and appendix D, except for some elements of the test subject material, in which case the person must submit verification that supplementary information will be provided pursuant to appendix D, section (j)." (emphasis added). EPA is amending § 82.161(g) to read "Interested persons must submit to the Administrator at the address in § 82.160(a) verification that the voluntary certification program *substantially complied with most* of the standards of § 82.161(c) and appendix D of subpart F. (emphasis added). If the program did not test or train participants on some elements of the test subject material, the person must submit verification that supplementary information on the omitted material will be provided pursuant to appendix D of subpart F, section (j)."

In reviewing requests to grandfather technicians, EPA will assess the extent to which a program substantially complied with most of the requirements in each paragraph of § 82.161(c) and appendix D (paragraph (a) of appendix D being test preparation, (b), proctoring, (c), test security, etc.) and most of the basic concerns addressed by those paragraphs, considering the information that was available to the program at the time of its initial development. EPA believes that this is reasonable given the limited information available to these programs before the final rule was published and the question bank was released. For example, the proposed rule published on December 10, 1992, discussed the need for organizations to provide proctored tests under conditions that ensured test security, but did not specify that one proctor be provided for every 50 individuals taking the test as specified in the final rule. Under the approach taken in this document, voluntary programs that provided proctors, but did not necessarily provide exactly one proctor for every 50 individuals taking the test, would not be disqualified on that basis alone. EPA believes that the modification of the final rule to replace "met all" with "substantially complied with most" allows EPA to review these programs taking such circumstances into account.

Almost all commenters supported changing the language of § 82.161(g) to permit grandfathering of voluntary programs, although one commenter opposed grandfathering. A few commenters only supported grandfathering for the Type I level. Commenters who supported grandfathering cited EPA's rationale for making the change to permit it, stating that technicians and contractors in the air-conditioning and refrigeration industry required education on the new recycling requirements, and that voluntary programs fulfilled this need, probably significantly reducing refrigerant emissions. These commenters stated that any shortfalls in early testing and training could (and should) be remedied through providing supplemental information. Commenters also noted that failure to grandfather voluntary programs could discourage future participation in voluntary environmental education programs.

The commenter who opposed grandfathering argued that the certification testing being offered by new programs approved after the rule was published is significantly more difficult than that offered by one

voluntary certification program. As discussed below, EPA plans to evaluate voluntary certification programs on a case-by-case basis and to consider the content of the programs' testing in its grandfathering decisions. As discussed above, EPA will only grandfather voluntary programs that substantially complied with most of the certification standards and that send out any supplementary information that EPA considers necessary. EPA believes that the benefits of grandfathering such programs significantly outweigh the costs.

Three commenters supported grandfathering of voluntary programs only to the Type I level. These commenters claimed that none of the voluntary programs were as comprehensive or stringently administered as new programs approved after the rule was published; therefore, grandfathering of technicians who participated in these programs to the Type II or Type III level would be dangerous to the environment and unfair to technicians who worked hard to successfully complete new programs. However, the commenters believed that grandfathering to the Type I level was acceptable because of the smaller charge sizes and lesser safety concerns associated with small appliances. One of the commenters stated that EPA should not grandfather programs simply because they offered an appropriate testing environment, but should examine content of voluntary exams to ensure that those exams were "reasonably similar" to the exams now being used for certification. This commenter argued that, for example, programs that did not test participants on the final rule, including all of those offered before publication of the final rule, should not be grandfathered even to Type I unless participants took and passed a test drawn from the Core section of the question bank.

The commenters also stated that requiring grandfathered technicians to take further testing before granting them Type II or Type III certification would not represent an undue burden. One of the commenters expressed the opinion that the organizations that operated voluntary programs should make any retesting an administratively simple and accessible option, because they assumed this responsibility when they made a conscious decision to offer testing before certification requirements were finalized.

EPA agrees with these commenters that the content of voluntary testing and training, along with the administrative criteria listed in appendix D, must be considered in any grandfathering decision. EPA does not intend to grandfather a voluntary program for a given Type if the program did not include any test questions or training for that Type. Indeed, voluntary programs differed significantly in their coverage of the various Types. Some programs focussed exclusively on Type I, while others covered Types I through III. EPA considers it appropriate to evaluate these programs individually, rather than adopting an across-the-board policy to grandfather them all to the same level.

EPA considers it appropriate to permit voluntary programs to address gaps within the Types covered by their original testing and training by providing additional materials to past participants. If a program has substantially complied with the standards, the voluntary certification should have largely met the educational purposes of requiring certification. While there may be some areas that a voluntary program did not cover, providing additional information should ensure that technicians achieve an acceptable level of competency. Moreover, requiring voluntary programs to have anticipated all of the topics within a Type constitutes just as impossible a hurdle as requiring them to have anticipated every administrative requirement in appendix D. Even the original final rule published on May 14, 1994, recognized this and permitted programs to be grandfathered as long as they "submit verification that supplementary information on that material will be provided."

Thus, voluntary programs that did not fully cover the requirements of the final rule, for instance, will be permitted to address the omission by developing supplementary materials on that topic, submitting these materials to EPA for review and revision, and then sending these materials to past participants. Past participants will be required to sign a statement that they have read the new materials and to return it to the voluntary program operator before receiving their certification cards. EPA believes that this process will ensure that supplementary materials are of acceptable quality and that past participants read and learn them before being certified.

EPA disagrees with the assertion that retesting on a Type would not represent an undue burden to technicians who participated in a voluntary program that covered that Type. Although EPA strongly believes that proctored testing in Types II and III is worthwhile for technicians who have not already been tested on those Types, the Agency believes that the costs of such testing outweigh its benefits for technicians who have already been tested in the Types. Those costs include time taken to travel to the test site and take the test, travel costs, and the cost of the test itself. The differences between the Type II and Type III tests being offered by new programs and those offered by many voluntary programs are not significant enough to warrant these additional investments. However, the Agency again emphasizes that if Type II or Type III was *not* covered by a voluntary program, then past participants in that program will have to take proctored testing before they can be certified for that Type.

One commenter argued that EPA should require programs that operated after the publication of the final rule (May 14, 1993) to have met stricter standards than programs that operated before publication of the final rule. This commenter stated that programs operating after publication of the final rule, unlike programs operating earlier, knew both the administrative and content requirements that would have to be met by technician certification programs. The commenter claimed that some programs "enticed technicians to be certified through an abridged, open-book testing methodology prior to October 15, 1994, with promises of these substandard processes being grandfathered." The commenter believed that rewarding these programs and the technicians who participated in them by grandfathering the programs would be unfair to programs and technicians who attempted to meet higher standards.

Although EPA will consider the efforts of voluntary programs to update their testing content and procedures to conform to the requirements of the final rule after May 14, 1993, EPA will not require voluntary programs to have met all of those requirements to be grandfathered. First, grandfathering voluntary programs that substantially complied with the standards of § 82.161 and appendix D should further the environmental goals of requiring certification, even if such programs did not fully update in conformity with the requirements of the final rule. If a voluntary program was already substantially complying with the requirements of § 82.561 and Appendix D before May 14, 1993, then changes to its administrative practices after May 14, probably would not have had a significant impact on the overall quality of the program. At the same time, omissions from a program's training and testing can be addressed by supplying past participants with supplementary materials that participants must read before they receive their certification

cards, as discussed above. Omissions can be rectified in this manner regardless of when the original training and testing occurred.

The process of developing and disseminating supplementary materials also mitigates the unfairness perceived by the commenter; programs that updated their testing and training more swiftly need not develop, and their participants need not review, as much supplementary information as programs that did not update their testing and training. In addition, until September 30, 1993, voluntary programs continued to provide the only source of training in refrigerant handling. EPA believes that the environmental benefit of timely, reasonably stringent training and testing outweighed any costs associated with programs' failure to adhere to every requirement in the final rule.

Second, it was not possible for programs to fully comply with the standards of the final rule until September 30, 1993. The bank of test questions was not available to programs until EPA approved the first set of programs, so programs could not have included these questions in their testing before that date. Requiring voluntary programs to have included such questions would automatically prevent all voluntary programs from being grandfathered.

Third, programs were understandably reluctant to change their procedures and materials given their uncertainty over when EPA would announce the approval of the first set of technician certification programs and thereby make the bank of test questions available. As discussed below, the process of reviewing certification programs can vary greatly in length, depending upon the completeness of initial submissions and the speed with which programs respond to later inquiries. Voluntary programs, therefore, could not be certain whether the effort and expense of revising and reprinting old tests would be justified, since such revised tests would become obsolete once the program operator had access to the bank of test questions. The same uncertainty surrounded efforts to develop and disseminate new administrative procedures, since such procedures would also probably be revised once programs were approved.

Finally, while EPA did not approve of programs advertising an "easy" alternative to a future, closed-book test, determining whether each program that applies for grandfathering did or did not engage in such advertising would be very difficult. It would be even harder for EPA to determine whether advertising that did occur was a centrally organized campaign or an isolated incident. Thus, EPA does not plan to use reports of such advertising as a criterion in its grandfathering decisions.

EPA will, however, consider requiring recertification of grandfathered technicians after some period, perhaps two years, if EPA's experience enforcing the rule indicates that their training was not adequate. As noted in the final rule published on May 14, 1993, EPA reserves the right to require recertification of any or all technicians, if necessary.

Another commenter argued that EPA should grandfather only programs that included a "live" instructor and should not grandfather programs that offered testing without training. EPA will consider the training and testing offered by programs in their entirety rather than requiring a specific instruction technique. While a videotape cannot respond to questions from technicians as a "live" instructor can, a thorough and accurate videotape is preferable to an ill-informed instructor. Moreover, if technicians have succeeded in passing a comprehensive, difficult test without taking a special training course, EPA believes that they have demonstrated their knowledge of proper and legal techniques for refrigerant handling, which is the goal of technician certification.

EPA is extending the November 14, 1994 deadline until May 15, 1994, for those technicians who successfully completed a voluntary program that applies for grandfathering no later than December 9, 1994. During the extension period, those technicians who successfully completed a voluntary program may continue to service, maintain, repair, and dispose of appliances and may buy refrigerant using the certificates or cards issued by the voluntary program. This additional time will allow EPA to consider applications by voluntary programs for grandfathering and will enable grandfathered voluntary programs to provide supplementary information, if necessary, and proof of EPA-approved certification to grandfathered technicians. To make their past participants eligible for this extension, programs must apply (or have already applied) within 30 days of publication of this amendment (1) to be approved as a technician certification program under § 82.161(c), and (2) to grandfather technicians. This extension does not apply to technicians who did not participate in any voluntary program, or who participated in voluntary programs that have not applied and do not apply within the set period. These technicians must still be certified by November 14, 1994.

This extension provision is very similar to the one proposed. The one difference between the proposed and final provisions is that the proposed provision would have made the extension effective until six months after publication of the final rule, and the final provision makes the extension effective until May 15, 1995, six months after the effective date of the technician certification requirement. EPA made this change to establish a simple, memorable date for the expiration of the extension. Because EPA expects to announce most of its grandfathering decisions when the rule becomes effective, and because EPA expects the rule to become effective before November 14, 1994, technicians who successfully completed voluntary programs will still have at least six months to complete any additional training or testing necessary to become certified.

All commenters in favor of grandfathering supported providing an extension of the November 14 deadline to past participants in voluntary programs. Many commenters cited the reasons in the proposal, noting that the November 14 deadline did not anticipate the delay caused by this amendment to the regulations. The commenters agreed that it would be counter-productive to force technicians who completed a voluntary program to take additional testing simply because they do not know whether or not their voluntary program will be grandfathered. However, some commenters believed that this extension should be linked to the date that EPA approves or disapproves grandfathering of the voluntary program, rather than the date of publication of the final amendment or any other specific date. This would ensure, these commenters argued, that participants in these programs had sufficient time to complete additional testing and/or training, if necessary. In addition, two commenters argued that EPA should be required to complete review of grandfathering applications within a specific period (one commenter suggested 30 days). Finally, one commenter believed that voluntary programs should be required to inform their past participants within a specific period both whether or not the programs applied for grandfathering and whether EPA approved or disapproved their applications.

EPA agrees with the commenters that voluntary programs and/or their past participants should have sufficient time to provide or obtain additional training

or testing before the certification requirements go into effect for all technicians. Consequently, EPA has made a considerable effort to review grandfathering applications in a timely fashion. The Agency plans to announce the majority of its grandfathering decisions when this rule is published or shortly thereafter. EPA believes that this will leave voluntary programs and their past participants enough time to provide any required supplementary information and to complete any needed additional training or testing before the general six-month extension expires, making it unnecessary to issue separate, six-month extensions to each program.

Moreover, the Agency considers a fixed, uniform deadline for certification essential to effective compliance with and enforcement of the sales restriction. The sales restriction requires that every refrigeration wholesaler in the U.S. understand which certification cards issued by approved programs and which credentials issued by voluntary programs are valid for refrigerant purchase. If the credentials issued by voluntary programs "expired" on different dates, and if each expiration date were announced individually, compliance with the sales restriction would become unacceptably complicated for wholesalers.

EPA does not believe that imposing a deadline for review on itself is either necessary or practical. As noted above, the Agency expects to announce most, if not all, of its grandfathering decisions when this amendment is published. The only voluntary programs on which EPA will not have issued decisions will be those that have not yet applied at all and those that have not completed the necessary information requirements. The review process typically involves multiple contacts between EPA and the applying program; the speed with which it is completed depends as much upon the time taken by the program to respond to inquiries and develop submissions as the time taken by EPA to review them. Thus, even if it devotes all of its resources to the review process, EPA cannot guarantee that reviews will be completed within a given period.

EPA agrees, however, that voluntary programs should be required to inform past participants of EPA's decision and to provide any required supplementary information within a set period, so that technicians have sufficient time to review the supplementary information or to obtain additional training and testing if it is required. EPA is therefore modifying the proposed amendment to require that (1) voluntary programs that EPA has disapproved inform their past participants of EPA's decision within 30 days of their disapproval, and (2) programs that EPA has approved inform their past participants of EPA's decision and provide any supplementary information within 60 days of their approval. EPA believes that 30 days will provide sufficient time for disapproved voluntary programs to generate and mail their notifications while allowing technicians sufficient time (approximately five months, in most cases) to complete a certification program approved after May 14, 1994.

EPA is allowing 60 days rather than 30 days for approved programs because the Agency recognizes that printing and disseminating supplementary information may take longer than printing and mailing simple notifications. In addition, technicians who successfully completed voluntary programs that are approved for grandfathering will need less additional training and testing than technicians who participated in voluntary programs that are not approved. Finally, EPA is requiring programs approved for grandfathering to issue certification cards to technicians within 60 days of the programs' receipt of signed statements from the technicians indicating that the technicians have read the supplementary information. Based on discussions with voluntary programs, EPA believes that this will allow sufficient time for voluntary programs to generate and mail the cards, while allowing technicians enough time to read the supplementary information.

EPA does not believe that this notification requirement will impose an unreasonable burden on the voluntary programs that apply for grandfathering. These voluntary programs have undertaken to certify technicians in advance of the final regulations and have applied to EPA for grandfathering. Given their voluntary assumption of responsibility, it is reasonable to place on the voluntary programs the responsibilities (1) to inform their participants whether their applications for grandfathering were successful and (2) to send their participants certification cards in a timely fashion.

However, EPA is not requiring voluntary programs to notify participants whether or not the program has applied for grandfathering. EPA believes that it is the responsibility of technicians and/or their employers to obtain this information, and this information is (and has been) readily available from both EPA and voluntary technician certification programs. The Stratospheric Ozone Hotline has been distributing a list of programs that have applied for grandfathering since March, 1994. The list includes the following programs:

Amtrak Technical Training Center
Air Conditioning Contractors of America
CFC Reclamation and Recycling
Climate Control Institute, Inc.
Delaware County Community College
Environmental Training Group
Hartsog Trade School
Johnson Controls, Inc.
National Apartment Association
National Association of Power Engineers
People's Natural Gas
Refrigeration Environmental Protection Association
Refrigeration School, Inc.
Refrigeration Service Engineers Society
Rock Valley College
State of Alaska
State of Wisconsin, Department of Industry, Labor and Human Relations
Sears Product Services
Sequoia Institute
Tennessee Valley Technical Program
Texas Engineering Extension Service
United Association of Journeymen and Apprentices of the Plumbers and Pipe Fitting Industry of the United States and Canada
VGI Training Division, Video General Inc.
York International

Since they first appeared on this list, six of the programs, including Delaware County Community College, National Apartment Association, People's Natural Gas, Rock Valley College, Sequoia Institute, and Tennessee Valley Technical Program, have withdrawn their applications for grandfathering. However, because these programs appeared on the list, and because some of these programs withdrew relatively recently, EPA will grant past participants in these programs the six-month extension. These programs must inform their past participants that they have withdrawn their request for grandfathering by December 9, 1994, if they have not done so already, so that past participants can obtain certification through a program approved after May 14, 1993.

Additional programs may apply for grandfathering until December 9, 1994. EPA will provide wholesalers and other interested parties with a revised list at that time, if necessary.

One commenter believed that the amendment should allow technicians to continue to service equipment for six months from the promulgation date, as long as the equipment owner or operator could demonstrate that its technicians attended a voluntary certification program. This commenter believed that

the extension should apply even if the voluntary program does not apply for grandfathering. EPA believes that only technicians who participated in voluntary programs that apply for grandfathering should be granted the six-month extension. Without an application for grandfathering, EPA has no reason to assume that the training might have been adequate to significantly meet the goals of the technician certification program. The extension is premised on the assumption that in many cases the voluntary programs have ensured technician training adequate to meet the certification program goals, as would be shown by substantial compliance with most of the standards in § 82.161 and appendix D. In such cases, EPA expects to approve the grandfathering applications, and thus the extension will have avoided the need to recertify technicians who eventually would be grandfathered. Where the program has not applied for grandfathering, however, EPA has no basis for believing either that there was a reasonable possibility that the program significantly met the goals of certification, or that the technician would not have to recertify at the expiration of the extension period. EPA believes that *bona fide* voluntary certification programs will make the effort to apply for grandfathering, and that, in fact, most of those programs have applied already.

In addition to the changes outlined above, in this amendment EPA is clarifying how it will determine whether programs and individual technicians will be grandfathered for a given Type. Whether a voluntary certification program will be grandfathered for a Type will depend upon the coverage by the program of the material in that Type. Whether an individual technician will be grandfathered for a given Type will depend upon (1) whether the technician successfully completed a voluntary program that has been grandfathered for that Type, (2) whether the technician successfully completed the portions of the voluntary certification program that correspond to that Type, and (3) whether the technician reads any supplementary information required by the Administrator pursuant to § 82.161(g)(1) and returns a signed statement to that effect to the program. For clarity, EPA is also adding a definition of "voluntary certification program." EPA had also proposed adding a definition of "to be grandfathered" but the Agency has determined that this definition is unnecessary. The regulations will simply refer to the "approval" of a voluntary program or the "certification" of a technician under a voluntary program.

To maintain consistency, EPA is also modifying appendix D, section j. The revised section reads:

EPA will grandfather technicians who successfully completed voluntary programs whose operators seek and receive EPA approval to grandfather these technicians, in accordance with § 82.161(g). As part of this process, these certifying programs may be required to send EPA-approved supplementary information to ensure the level of the technicians' knowledge. Technicians will be required to read this supplementary information as a condition of certification. The certifying programs will also issue new identification cards meeting the requirements specified above.

EPA is deleting the second paragraph of appendix (D)(j). The deleted material reads:

Persons who are currently technicians must be certified by November 14, 1994. Technicians that participated in certification programs which do not become EPA-approved certifying programs must either receive EPA-approved supplemental information from the original testing organization or be certified by taking a test given by an EPA-approved certification organization by November 14, 1994.

This provision has been rendered redundant by the more specific requirements in § 82.161 (a) and (g). Also, technicians who participated in programs that are not approved for grandfathering do not have the option of becoming certified through receipt of EPA-approved supplemental information.

B. Clarification of the Scope of the Technician Certification Requirement

EPA is making several changes to clarify the scope of the technician certification requirement. Four provisions related to the scope of this requirement were somewhat inconsistent: the definitions of "technician," and "opening," the provision at § 82.154(l) that prohibits anyone but certified technicians from opening or disposing of appliances, and the technician certification requirements at § 82.161(a). In the August 15, 1994 notice, EPA proposed changes intended to eliminate the inconsistencies. First, EPA proposed to modify the definition of "opening" in order to distinguish it more clearly from the definition of "technician." In the proposed change, "opening" would have been defined as any service, maintenance, or repair on an appliance that *would* (instead of "could") be reasonably expected to release refrigerant from the appliance to the atmosphere unless the refrigerant were previously recovered from the appliance. Second, EPA proposed to modify the disposal provision of the definition of "technician" to include only those parts of the disposal process (e.g., evacuation of the equipment) that have the potential to release refrigerant. Third, the proposal linked the definition of technician to the certification requirement at § 82.161 by replacing the term "person" in that requirement with the term "technician." Fourth, EPA proposed to eliminate the prohibition requiring technician certification for "opening" appliances.

Commenters supported EPA's efforts to clarify the scope of the technician certification requirement. In particular, commenters supported EPA's efforts to exclude persons from the requirement who performed activities that have very little chance of releasing refrigerant, such as painting appliances or repairing empty appliances. However, some commenters disagreed with the proposed scope, and others believed that the proposed clarification either failed to remove all of the ambiguities or introduced new ones.

The proposed clarifications are necessary to accomplish the intended purposes of the provisions being revised. One important goal of the refrigerant recycling provisions is to clearly identify those conditions that will require evacuation of an appliance. Another critical element of the provisions is to state the kinds of activities that may be performed only by a certified technician. In addition, EPA intends the regulations to clearly indicate the types of situations that do not require evacuation and those activities that need not be performed by a certified technician.

In their current form, the provisions do not clearly distinguish maintenance, service, repair and disposal that should require technician certification from maintenance, service, repair and disposal that should require evacuation of the appliance or component to be serviced. EPA believes that technician certification requirements should be triggered by activities that carry a reasonable risk or probability of refrigerant release. Where there is a reasonable risk of release, certification ensures among other things that the technician knows how to minimize that risk and understands the environmental importance of avoiding a release. However, EPA believes that evacuation

requirements should be triggered by activities that would release refrigerant unless the refrigerant were recovered previously. Evacuation avoids such an otherwise inevitable release by emptying the appliance of refrigerant prior to the contemplated activity. (While some refrigerant will remain in an appliance even after the appliance has been evacuated pursuant to § 82.156, the Agency does not intend to require evacuation to levels below those specified in § 82.156.)

In the rule published May 14, 1993, EPA had linked both the technician certification and evacuation requirements to the definition of "opening." Thus, "technician" was defined as "any person who performs maintenance, service, or repair that could reasonably be expected to release" refrigerant, and "opening" was defined as "any service, maintenance, or repair * * * that could reasonably be expected to release refrigerant." Evacuation was required prior to opening, and only technicians were allowed to open appliances. EPA had linked these requirements believing that the same group of people who performed service that required evacuation would be those who engaged in activities that carry significant risk of refrigerant release.

In the proposed amendment, EPA recognized that there are some types of service, such as charging appliances, that should not trigger evacuation requirements but that carry a significant risk of refrigerant release. On the other hand, there are other types of service, such as replacement of compressors, that should trigger evacuation requirements but that, once evacuation is complete, carry no risk of refrigerant release. Moreover, there are some people who engage only in one or the other of these types of maintenance, service, repair, and disposal.

Accordingly, EPA proposed to detach the certification requirement from "opening" appliances by deleting prohibition § 82.154(l), which had required certification for persons who open appliances. In addition, EPA proposed to sharpen the distinction between the definitions of "opening" and "technician." Whereas both definitions had referred to maintenance, service, or repair, "that *could*" [emphasis added] reasonably be "expected to release refrigerant to the atmosphere," the proposed definition of "opening" was changed to "service, maintenance, or repair * * * that *would* [emphasis added] be reasonably expected to release refrigerant to the atmosphere." The evacuation requirements remained triggered by "opening" of appliances. Finally, EPA tied the certification requirements at § 82.161 to the definition of technician, clarifying that maintenance, service, repair, and disposal that has no reasonable chance of releasing refrigerant would not require certification. In this fashion, EPA attempted to convey that while technician certification requirements would be triggered by activities carrying a reasonable risk or probability of refrigerant release, evacuation requirements would be triggered by activities that certainly would release significant quantities of refrigerant unless the refrigerant were recovered previously.

Commenters have stated, however, that changing the "could" in the definition of "opening" to "would" does not sufficiently define the types of maintenance, service, repair, and disposal that require evacuation of the appliance or component to be serviced. In addition, commenters asserted that, due to the ambiguity of the term "could," the proposed definition of technician fails to sufficiently define the types of maintenance, service, repair, and disposal that should require technician certification. Commenters noted that there are a variety of types of activities that might still be included in the certification requirement although EPA did not intend certification to cover these activities. Procedures such as painting appliances, tightening nuts and bolts on fully charged appliances, and disposing evacuated appliances "could" release refrigerant. As commenters pointed out, a dropped paint brush or wrench has a minute chance of rupturing a refrigerant line, while tightening nuts and bolts could release refrigerant in the unlikely event of bolt shearing or failure. In addition, commenters noted that under the current definition, certification might be required for maintenance, service, repair, and disposal of evacuated appliances because small amounts of refrigerant would be released even from evacuated appliances.

Commenters suggested a variety of alternative methods for clarifying the scope of the evacuation and technician certification requirements. Many commenters suggested that EPA explicitly list in the definitions of "opening" and "technician" the activities that it intended to include in or exclude from those definitions. For instance, one commenter proposed explicitly excluding disposal of empty appliances from the definition of "technician." Another commenter recommended adding a statement to the definition of "opening" that read, "opening does not include any activity intended by design to close or tighten the system, including but not limited to tightening nuts and bolts to reduce refrigerant leaks." A third commenter suggested including "adding or removing class I or class II refrigerant from an appliance" in the definition of "opening."

Commenters also suggested explicitly listing included or excluded activities in other provisions of the regulation, such as the evacuation requirements at § 82.156(a) and the prohibition at § 82.154(l). (Some commenters did not appear to realize that EPA was proposing to delete this prohibition.) One commenter suggested that EPA add language to § 82.156(a) clarifying that "[a]dding refrigerant does not, in itself, require evacuation." A second commenter proposed excluding from § 82.154(l) "persons who repair, service, or maintain appliances that do not contain refrigerant at the time work is performed." A third commenter suggested adding a provision that would prohibit anyone but certified technicians from adding or removing refrigerant from appliances.

In addition, commenters recommended other changes to the definition of "opening." These commenters focussed on the phrase, "would be reasonably expected to release refrigerant," which they found subjective and unclear. One commenter suggested substituting "would create a reasonable probability" for "would be reasonably expected." Two commenters recommended eliminating the concept of refrigerant release from the definition altogether and defining "opening" as "entry into the refrigeration circuit of an appliance." One of these defined "entry" as "any action that is intended by design to violate the integrity of an enclosure that contains or would contain the refrigerant."

There are clearly a number of ways in which the scopes of the certification and evacuation requirements could be clarified. To keep the rule as straightforward as possible, EPA has chosen to place the conditions that trigger these requirements in the definitions of "technician" and "opening" respectively and to use the definitions alone to delineate the scopes. In addition, as proposed, EPA is eliminating the prohibition at § 82.154(l), which introduced confusion by linking technician certification requirements to the definition of "opening."

As discussed above, EPA believes that evacuation requirements should be triggered by activities that would release refrigerant unless the refrigerant were

recovered previously. This includes any maintenance, service, or repair that leaves the appliance open to the atmosphere for more than an instant. It does not include connecting and disconnecting hoses and gauges to and from the appliance to measure pressures within the appliance and to charge refrigerant into or recover refrigerant from the appliance. While these procedures may release refrigerant, the releases are small and unavoidable. Moreover, most of the procedures are fundamentally inconsistent with refrigerant recovery; their purpose would be defeated by it.

In view of these considerations, EPA is establishing the following definition of "opening:"

Opening an appliance means any service, maintenance, or repair on an appliance that would release class I or class II refrigerant from the appliance to the atmosphere unless the refrigerant were recovered previously from the appliance. Connecting and disconnecting hoses and gauges to and from the appliance to measure pressures within the appliance and to add refrigerant to or recover refrigerant from the appliance shall not be considered "opening."

EPA believes that the revised definition of "opening" responds to the concerns raised about the proposed definition and clarifies the scope of activities subject to evacuation requirements. By replacing "would be reasonably expected" with "would," the revision minimizes any subjectivity that may have been in the proposed definition and clarifies that the activities covered are those that would release, not just could release, refrigerant if the refrigerant were not recovered first. The revised definition also recognizes that there are some types of maintenance, repair, and disposal whose purpose is not consistent with refrigerant recovery and that therefore should not trigger evacuation requirements.

EPA does not believe that "entry into the refrigerant circuit" is sufficiently clear, in itself, to serve as the definition of "opening." Even combined with the suggested definition for "entry," the suggested definition of "opening" may be interpreted to include more than the commenters evidently intended. One could argue, for instance, that attaching hoses and gauges to an appliance could be construed as an "action that is intended by design to violate the integrity of an enclosure that contains or would contain the refrigerant." When the hose is attached, the previously self-contained appliance has an opening in it, even if this opening leads only to a charging cylinder or gauge instead of to the atmosphere. In fact, EPA believes that the language in the proposed definition of "entry" is more useful in the definition of "technician" than in the definition of "opening," and as discussed below, the Agency is using this language in the former.

Some of the commenters suggested defining "opening" in a way that would prevent "opening" from ever occurring if the evacuation requirements of § 82.156(a) were observed. One commenter, for example, suggested that EPA revise the definition to read, "Opening an appliance means entry into the refrigerant circuit of an appliance containing a class I or class II refrigerant, unless the refrigerant were previously recovered from the appliance." Another commenter recommended that EPA change the definition to read, "Any repair, service, or maintenance on an appliance that would create a reasonable probability that the physical integrity of the refrigeration circuit would be compromised and allow a release of refrigerant from the appliance to the atmosphere. Recovery of the refrigerant from the refrigeration circuit by a certified technician before beginning such repairs, service, or maintenance shall create a rebuttable presumption that there is no reasonable probability that a release of refrigerant from the appliance would be allowed as a result thereof."

EPA developed the term "opening" to describe the activities before which refrigerant should be recovered. Neither the existing nor the proposed definition of "opening" requires actual refrigerant release; instead, the definitions refer to activities that would ("could" in the existing definition) release refrigerant if the refrigerant were not previously recovered. The activities can take place either while the appliance is fully charged or after it is evacuated; they are considered "opening" either way. In this way, EPA established a simple trigger that can be invoked in the evacuation requirements at § 82.156(a) as follows: "all persons opening appliances * * * must evacuate * * * *." If "opening" never occurs, then the evacuation requirements are never triggered. Alternative ways of triggering evacuation requirements, such as stating that recovering refrigerant establishes a rebuttable presumption that opening does not occur, add unnecessary complication and confusion to the regulatory structure.

As stated above, EPA believes that technician certification requirements should be triggered by activities that carry a reasonable risk or probability of refrigerant release. The Agency believes that activities that carry a reasonable risk of refrigerant release are those that are intended to move across the boundary of the refrigerant circuit, or "violate the integrity of the refrigerant circuit," as one commenter put it, while refrigerant remains in the appliance. These conclusions flow directly from the physical structure of refrigeration systems, including enclosed refrigerant circuits. As long as the refrigerant circuit is not violated, there is no risk of release expected. However, the risk of release increases dramatically immediately upon violation of the refrigerant circuit.

Violation of the refrigerant circuit includes attaching hoses and gauges to add or remove refrigerant and to measure pressures within the appliance. It also includes field assembly of pre-charged split systems, which involves establishing a new connection between previously separate refrigerant enclosures. It does not include activities such as painting the appliance, re-wiring an external electrical circuit, replacing insulation on a length of pipe, or tightening nuts and bolts on the appliance (unless the nut or bolt is obviously weakened and may be reasonably expected to shear and result in refrigerant release). EPA agrees with commenters that the chances of release during these activities are remote. EPA intended the phrase "could be reasonably expected to release" to prevent these remote possibilities from triggering the certification requirements, particularly since certification would not reduce the likelihood of such accidents occurring.

Activities that carry a reasonable risk of refrigerant release also exclude maintenance, service, repair, or disposal of appliances that have already been evacuated pursuant to § 82.156, unless the service consists of recharging the appliance. As stated in the proposal, EPA does not believe that individuals who service, maintain, repair, or dispose of only empty appliances need to be certified, since releases have already been minimized to the extent possible through evacuation. While maintenance, service, or repair on the empty appliance could conceivably have an impact on future releases, particularly if performed incorrectly, technician certification does not, and cannot, address every aspect of repair that could lead to such releases. Thus, requiring persons who repair empty appliances to be certified would not significantly reduce the likelihood of such releases. However, requiring certification for the individual who recharges the appliances probably will

significantly reduce the likelihood of such releases, because EPA's bank of test questions emphasizes the need to test appliances for leaks before recharging them. By performing such testing, the individual who recharges the appliance will be able to detect and rectify many of the problems that would lead to subsequent emissions from the appliance.

Just as EPA considers certification important for persons recharging appliances, the Agency considers certification important for persons who determine whether or not appliances have been evacuated adequately to be opened. However, the revised definition of technician, without changes elsewhere in the rule, might permit uncertified persons to make this determination in one instance. Specifically, the revised definition excludes individuals who move refrigerant within an appliance (e.g., into a receiver) and who thereby evacuate a component to be serviced. The revised definition also excludes individuals who open evacuated appliances or components. While EPA does not believe that either of these activities requires certification in itself, EPA recognizes that when they are performed in sequence by uncertified technicians, there is a risk that the appliance will be opened before it has been properly evacuated pursuant to § 82.154(a). Thus, EPA is inserting a sentence into § 82.154(a) that will require verification of evacuation by certified technicians. § 82.156(a) is amended to read:

(a) Effective July 13, 1993, all persons opening appliances except for MVACs for maintenance, service, or repair must evacuate the refrigerant in either the entire unit or the part to be serviced (if the latter can be isolated) to a system receiver or a recovery or recycling machine certified pursuant to § 82.158. All persons disposing of appliances, except for small appliances, MVACs, and MVAC-like appliances must evacuate the refrigerant in the entire unit to a recovery or recycling machine certified pursuant to § 82.158. Effective December 9, 1994, certified technicians must verify that the applicable level of evacuation has been reached in the appliance or the part before it is opened.

To make the definition of technician as clear as possible, EPA is explicitly listing activities that do or do not have a reasonable probability of releasing refrigerant in the definition of technician. The revised definition reads as follows:

Technician means any person who performs maintenance, service, or repair that could be reasonably expected to release class I or class II refrigerants from appliances, except for MVACs, into the atmosphere. Technician also means any person who performs disposal of appliances, except for small appliances, MVACs, and MVAC-like appliances, that could be reasonably expected to release class I or class II refrigerants from the appliances into the atmosphere. Performing maintenance, service, repair, or disposal could be reasonably expected to release refrigerants only if the activity is reasonably expected to violate the integrity of the refrigerant circuit. Activities reasonably expected to violate the integrity of the refrigerant circuit include activities such as attaching and detaching hoses and gauges to and from the appliance to add or remove refrigerant or measure pressure and adding refrigerant to and removing refrigerant from the appliance. Activities such as painting the appliance, re-wiring an external electrical circuit, replacing insulation on a length of pipe, or tightening nuts and bolts on the appliance are not reasonably expected to violate the integrity of the refrigerant circuit. Performing maintenance, service, repair, or disposal of appliances that have been evacuated pursuant to § 82.156 could not be reasonably expected to release refrigerants from the appliance unless the maintenance, service, or repair consists of adding refrigerant to the appliance. Technician includes but is not limited to installers, contractor employees, in-house service personnel, and in some cases, owners.

EPA is also adding the following definition of "refrigerant circuit:"

Refrigerant circuit means the parts of an appliance that are normally connected to each other (or are separated only by internal valves) and are designed to contain refrigerant.

There was some disagreement among the commenters regarding the kinds of maintenance, service, repair, and disposal that should require technician certification. Two commenters supported requiring certification of individuals who add refrigerant to appliances; however, one commenter opposed this requirement. This commenter argued that requiring certification for persons who add refrigerant to industrial process refrigeration was "extremely burdensome," since even transferring refrigerant from one portion of an industrial process refrigeration appliance to another (such as an internal receiver) could be construed as "adding refrigerant." In addition, the commenter stated that "the regulated community was lead (sic) to believe that the simple addition of refrigerant to a system * * * did not have to be certified." The commenter also stated that EPA staff told him in March of 1994 that persons who charge equipment do not need to be certified. Finally, the commenter stated that if EPA intended to require certification of persons who add refrigerant to industrial process refrigeration systems, EPA should establish a new certification category for such persons and should permit such persons an additional six months to become certified, since EPA was reversing its earlier position regarding the need for such persons to be certified.

EPA does not believe that requiring certification for persons who add refrigerant to industrial process refrigeration systems is unduly burdensome. First, transferring refrigerant from one part of a refrigeration circuit to another (including receivers that are separated from the operating circuit only by internal valves) will not require certification under the new definition of technician. The definition excludes activities that do not "violate the integrity of the refrigerant circuit." Thus, technicians who only transfer refrigerant within industrial process units will not have to be certified. Second, at least three other users of industrial process refrigeration commented on the rule, and none of them expressed concern that certification of persons adding refrigerant to industrial process refrigeration systems would be "burdensome." In fact, one of these commenters recommended that EPA add a provision to the regulation to specifically prohibit anyone but certified technicians from adding or removing refrigerant from appliances. Third, EPA believes that certification of persons adding refrigerant to industrial process systems (as opposed to transferring refrigerant within such systems) is justified because any disturbance of a refrigeration circuit has the potential to release significant quantities of refrigerant, for instance if a charging hose is not properly attached to a servicing aperture or if a valve is not resealed after charging.

To support the position that persons charging appliances should not be certified, the commenter also cited language from the preamble to the May 14, 1993 rule. This stated that persons who charge appliances during manufacture and transfer refrigerant from container to container did not have to be certified. The commenter implied that these activities were equivalent to charging appliances during servicing. However, in the same discussion cited

by the commenter, EPA repeatedly distinguished between these activities and servicing of appliances. EPA believes that transferring refrigerant between containers and charging during manufacture are in general less complex, more routinized, and in the case of charging during manufacture, more automated than charging appliances in the field. Thus, while EPA did not include appliance manufacturing personnel in its definition of "technician," it did include appliance "installers," whose only contact with refrigerant may be during the charging process.

EPA recognizes that there was some confusion within the regulated community regarding the scope of the certification requirement. In fact, EPA undertook this rulemaking in part to eliminate such confusion. However, EPA does not believe that the confusion justifies granting persons charging appliances their own category of certification or an additional six months to meet certification requirements. As noted above, only one commenter objected to the clarification that persons adding refrigerant must be certified; other commenters from the same sector supported this requirement.

One commenter supported EPA's clarification that installers of appliances must be certified. This commenter stated that the applicability of the certification requirement to installers had not been clear in the final rule published on May 14, 1993, but that the proposed definition corrected this problem. The commenter requested that EPA "continue to be consistent on this matter by prohibiting the sale of pre-charged split systems and components to 'do-it-yourself' installers such as homeowners."

Precharged components are parts of appliances that are sold with refrigerant already contained in them. Pre-charged split systems are air conditioners that are typically sold as two parts, one of which contains the evaporator, the other, the condenser. Both parts also contain refrigerant and must be joined at the installation site for the air conditioner to function.

As noted above, EPA agrees with the commenter that installers of pre-charged split systems and components should be certified, because joining the two halves of a split system during installation involves violation of the refrigerant circuit. Moreover, EPA agrees that sales of pre-charged split systems and other pre-charged appliance components should be limited to certified technicians to ensure that only certified technicians install them. The sales restriction provision (§ 82.154(n) in the rule published on May 14, 1994) contains an exception permitting the sale to uncertified persons of refrigerant contained in an appliance. While individual pre-charged components are clearly not "appliances," pre-charged split systems, although not fully assembled, arguably could be considered "appliances." Thus, the exception might be interpreted to permit the sale of pre-charged split systems to uncertified persons. EPA is revising this exception to remove this ambiguity and clarify that it allows the sale to uncertified persons of refrigerant contained in appliances only with fully assembled refrigerant circuits. This will prohibit the sale of split systems to anyone but certified technicians.

While this clarification of the sales restriction follows logically from the clarifications to the scope of the technician certification requirement that were proposed, the regulated community should have a reasonable period of time to conform to the revised sales restriction. The old exception to the sales restriction for refrigerant contained in appliances will therefore remain in effect until 60 days after publication of this final rule.

Another commenter argued that persons performing maintenance, service, or repair that are required during emergencies or that release only "de minimis" quantities of refrigerant should not need to be certified. This commenter stated that in an emergency, prompt action is often necessary in order to protect lives, property, and the environment. If a system were to develop a large leak during the night shift, for example, the entire refrigerant charge could be lost, necessitating shutdown of the process, before a certified technician was able to respond to a special call. All that might be required to repair the leak is tightening the nuts holding a flange together, an operation that would not be performed any better by a certified technician than by other plant personnel. The commenter stated that if EPA did not allow an exception to the certification requirements for emergencies, the commenter's staff may have no option but to "sit idly as entire charges of refrigerant escape." The commenter recommended that EPA establish the following exception to the certification requirements:

Nothing in this subpart is intended to prohibit servicing or maintenance activities performed by a person not certified as a technician pursuant to § 82.161, if the person is qualified by training and/or experience to perform the task safely and effectively, where:

* * * (2) The servicing or maintenance activity is necessary due to an emergency; no technician certified for that type of appliance pursuant to § 82.161 is available; and postponing the activity is likely to result in significant releases of refrigerant, significant hazards to health, safety or the environment, or substantial property damage.

EPA recognizes that emergency situations may arise where a certified technician is not immediately available to perform needed repairs. However, EPA is reluctant to establish a special exception for emergencies for a number of reasons. First, EPA has clarified above that many procedures that would reduce leakage, such as tightening the nuts on the flange in the commenter's example, do not require certification because they are not expected to violate the integrity of the refrigeration circuit. Second, EPA does not consider the certification requirement overly burdensome. If operators of air-conditioning and refrigeration equipment believe that there is a significant chance that an emergency leak may occur, they can ensure that a certified technician is available on-site or on-call during every shift. This certainly provides a credible alternative to sitting "idly as entire charges of refrigerant escape." Third, the language suggested by the commenter for the exception includes several undefined, subjective terms, including "qualified," "emergency," "available," "significant" (applied both to "releases" and "hazards"), and "substantial." Even if EPA considered the exception necessary, defining these terms would be very difficult. Consequently, the exception would be difficult to apply and enforce, and absent a clearly demonstrated need for such a provision, EPA is reluctant to adopt this exception.

The commenter also requested an exception from certification requirements for persons performing maintenance, service, or repair that release only "de minimis" quantities of refrigerant and that do not require the use of recycling or recovery equipment. The commenter argued that plant operators would be fully qualified to perform minor repairs such as changing a gauge, if the maintenance does not involve evacuating the appliance and any resulting losses of refrigerant are *de minimis*. According to the commenter, such operators are already familiar with procedures such as closing valves to isolate high-pressure materials and removing and installing gauges; these procedures apply to much of the equipment in industrial facilities in addition to refrigeration equipment. Thus, workers who are not refrigeration

technicians would be able to perform these tasks with no greater loss of refrigerant than a certified technician would experience. The commenter claimed that if technicians were required to be certified to perform these procedures, the commenter's training costs would rise by a factor of ten, based on the need to have at least two certified technicians on-site (in case one went on vacation) for four or five shifts per day. The commenter recommended that EPA adopt an exemption for activities releasing "de minimis" quantities of refrigerant very similar to the exemption recommended for emergencies.

Again, EPA is reluctant to establish an exemption based upon subjective terms such as "qualified" and "de minimis," absent a clearly demonstrated need for such a provision. EPA is especially reluctant to adopt a provision that might invite uncertified technicians to speculate whether releases would or would not be "de minimis." While uncertified technicians may be sufficiently "qualified by training or experience" to make an appropriate determination of a repair that would produce only de minimis releases and to complete the repair with minimal release, EPA has no assurance that this will be the case. The purpose of technician certification is to provide this assurance. If technicians are indeed "qualified by training or experience" to violate the integrity of a refrigerant circuit, then they should be able to pass the certification test without extensive or expensive additional training.

Moreover, EPA believes that the commenter's method for estimating increased training expenditures exaggerates these expenditures. For instance, rather than certifying nine additional persons per plant, the commenter could defer certain types of maintenance for less than 24 hours until a certified technician was on shift, or could arrange to have a certified technician on-call during night shifts or during vacations of a shift's usual certified technician.

C. Limited Exemption From Certification Requirements for Apprentices

As was proposed, EPA is amending the rule to clarify that apprentices who meet certain requirements are exempt from the certification requirement for two years. A person would be considered an apprentice if he or she (1) were currently registered as an apprentice in service, maintenance, repair, or disposal of appliances with the U.S. Department of Labor's Bureau of Apprenticeship and Training (or a State Apprenticeship Council recognized by the Bureau), and (2) had been registered as an apprentice for less than two years. An apprentice would not need to be certified as long as he or she were closely and continuously supervised by a certified technician while performing any maintenance, service, repair, or disposal that could reasonably be expected to release refrigerant from appliances into the atmosphere. However, uncertified apprentices would not be able to purchase refrigerant after November 14, 1994. This provision clearly would not permit uncertified technicians who were not in a training program to perform, under a certified supervisor, service, maintenance, repair, or disposal that could reasonably be expected to release refrigerant from appliances into the atmosphere.

EPA believes the apprenticeship exemption conforms with the goals of requiring certification. In establishing this exemption, EPA recognizes that field training programs in air conditioning and refrigeration provide a legitimate and valuable alternative or addition to classroom training. This exemption will allow bona fide trainees to gain field experience that will help them to obtain certification. Apprentices with such experience should better understand and apply the information on which certification tests them.

Limiting this exemption to registered apprentices under direct supervision and with no more than two years experience ensures that the exemption does not undercut the environmental protection goals of certification. Limiting the exemption to apprentice programs helps to ensure that supervision by certified technicians is available. In addition, the provision specifically requires close and continual supervision for the exemption to apply. Supervision should ensure that the apprentice follows environmentally safe practices. Moreover, the two-year time limit provides adequate time for the apprentice to gain useful field experience and seek certification, but narrowly bounds the period of any remaining environmental risk.

Most commenters supported an exemption from certification requirements for apprentices. However, many commenters believed that the exemption should be expanded to include persons who were not registered as apprentices with the Bureau of Apprenticeship and Training. Some commenters also believed that the exemption should be lengthened beyond two years. One commenter opposed the exemption.

Some commenters arguing for expansion of the exemption believed that it should also apply to students in classrooms. EPA wishes to clarify that the current rule *already* exempts students in vocational schools, community colleges, and university engineering programs from technician certification requirements, because work that is performed on appliances in classrooms or teaching laboratories strictly for educational purposes is not considered maintenance, service, or repair. EPA issued an applicability determination containing this conclusion on March 18, 1994 (Number 20). To the extent that prison training programs involve work that is strictly educational, students in those programs are also exempt from certification requirements.

Other commenters arguing for expansion of the exemption believed that it should also apply to trainees who work in the field but who are not registered with the Bureau of Apprenticeship and Training. One of these commenters noted that DOL-registered apprenticeship programs tend to be concentrated in the northeast and in heavily unionized areas, and that trainees in other areas may not use such programs as a means to learn the trade. This commenter believed that trainees should be permitted to submit an application to EPA to defer certification for up to two years, during which period a "learner's permit" could be issued to the trainee. Another commenter stated that many private sector contractors are discouraged from committing to formal, four-year apprenticeship programs by the Bureau's recordkeeping requirements and approval process. According to this commenter, prospective trainees often share contractors' reluctance to commit to a four-year program, preferring to be paid by competency level instead of by years in the program. The commenter believed that the requirement that trainees be supervised by certified technicians would prevent journeymen from masquerading as trainees, since it is expensive to send two workers to a site when one is sufficient. Both commenters believed that trainees should be supervised by certified technicians.

EPA recognizes that some trainees in air-conditioning and refrigeration maintenance, service, and repair are not currently registered with the Bureau of Apprenticeship and Training (or a recognized State Apprenticeship Council). However, EPA believes that third-party registration of apprentices and apprenticeship programs is critical to ensuring that only *bona fide* apprentices take advantage of the apprenticeship exemption. The

requirement that apprentices be supervised by certified technicians may discourage some technicians from misrepresenting themselves as apprentices, but does not replace the requirement that the apprentice be registered with the Bureau of Apprenticeship and Training. This is because the supervision requirement is more difficult to enforce than a requirement that uncertified apprentices be registered with the Bureau. The suggested approach that EPA register apprentices and issue two-year learner's permits would demand more resources to implement and enforce than are justified by the exemption.

The apprenticeship exemption is practicable from an enforcement and administration perspective only if it can be linked to an existing registration system, and the only existing, nationwide registration system that EPA is aware of (or that commenters mentioned) is that operated by the Bureau of Apprenticeship and Training. In discussions with EPA, the Department of Labor has emphasized that the Bureau registers any program that meets its requirements, including both union and non-union programs throughout the U.S. EPA considers compliance with these requirements a reasonable condition for granting field training programs the privilege of exempting their participants from the technician certification requirements.

Two commenters believed that EPA should extend the apprenticeship exemption from two years to three to five years to better match the length of typical apprenticeships. These commenters stated that extending the exemption would permit apprentices to thoroughly learn proper and legal refrigerant handling techniques. However, other commenters believed that the two-year term was appropriate or acceptable. One trainer noted that the end of the second year of training was the logical point at which a trainee would be prepared for certification. EPA agrees that a two-year exemption provides sufficient opportunity for trainees to become ready to pass the certification test. While beneficial, further training is not essential to certification. Also, as noted above, strictly limiting the time period for the apprenticeship exemption constrains the period of any possible heightened environmental risk.

One commenter believed that there should be no exemption for apprentices. This commenter argued that delaying the certification requirement could lead to "a nonchalant attitude to safe refrigerant handling" among apprentices. In addition, the commenter claimed that close supervision of apprentices by certified technicians is not always feasible, because a single journeyman may supervise several apprentices at once, at different locations. Another commenter argued that apprentices should be required to be certified in the Core Type, which focuses on environmental and safety issues, because passage of this section of the test does not require a working knowledge of the trade.

EPA does not believe that establishing the two-year apprenticeship exemption from the certification requirement would lead apprentices to develop a cavalier attitude toward safety. Safety and environmental training can and should begin as soon as an apprentice begins his or her training in air conditioning and refrigeration. Also, one commenter noted that their program provides classroom training for certification, but they believe on-the-job training is necessary to teach the proper procedures; this emphasizes the importance of allowing safety and environmental procedures to be taught in a hands-on setting. In addition, after the certification requirement goes into effect, technicians learning proper refrigerant handling will have the additional incentive of realizing that they must take and pass a test on this topic after two years. For the above reasons, EPA does not believe that certification in Core Type would provide sufficient environmental benefits to justify the burden of requiring apprentices to undergo the certification process in two separate steps.

Regarding the ability of journeymen to closely supervise apprentices, EPA emphasizes that if close supervision is not possible, then unsupervised apprentices must not be permitted to perform maintenance, service, repair, or disposal that could release refrigerant from the appliance to the environment. However, unsupervised apprentices may perform maintenance, service, repair, or disposal that could not be reasonably expected to release refrigerant, such as repair of evacuated appliances or electrical work.[1]

D. Miscellaneous Corrections and Response to Comments

1. Correction to Definition of "Recover"

EPA is correcting a typographical error in the definition of "recover." As discussed in the preamble to the May 14, 1993, final rule (58 FR 28671), EPA had intended to adopt the definition of "recover" developed by the American Society of Heating, Refrigeration, and Air-Conditioning Engineers (ASHRAE). The ASHRAE definition reads, "to remove refrigerant in any condition from a system and store it in an external container without necessarily testing or processing it in any way" (ASHRAE Guideline 3–1990). However, EPA inadvertently omitted the phrase "and store it in an external container" from the definition adopted in the final rule. EPA is therefore revising and clarifying the definition by restoring this phrase to it.

2. Correction to Prohibition § 82.154(g)

EPA is also correcting a typographical error in prohibition § 82.154(g). In the direct final regulation published on August 19, 1994, this prohibition incorrectly cited the definition of "reclaimed" at § 82.152(q). The prohibition indicated that the definition was found at § 82.152(g). With the addition of the definition of "apprentice," the definition of "reclaim" will now found be at § 82.152(r), and EPA is revising prohibition § 82.154(g) to reflect this change.

3. Correction to Required Practice § 82.156(e)

EPA is also restoring a phrase that was inadvertently omitted from § 82.156(e). This provision states, "Refrigerant may be returned to the appliance from which it is recovered or to another appliance owned by the same person without being recycled or reclaimed, unless the appliance is an MVAC-like appliance." EPA intended to except MVACs as well as MVAC-like appliances from this provision, which might otherwise be interpreted to supersede the recycling requirements of the section 609 refrigerant recycling rule published on July 14, 1992. EPA has always intended the section 609 regulation to govern the servicing of MVACs. Thus, EPA is revising the provision to read, "Refrigerant may be returned to the appliance from which it is recovered or to another appliance owned by the same person without being recycled or reclaimed, unless the appliance is an MVAC or MVAC-like appliance."

4. Correction to Reclaimer Certification Provisions

In the direct final rule published on August 19, 1994, EPA revised the reclaimer certification provisions at § 82.164 to reflect EPA's adoption of the updated ARI 700–1993 industry

[1] EPA is aware that there are other federal and state requirements for proper supervision, as one commenter noted, and the Agency does not intend to provide any kind of exemption from such requirements.

standard for reclaimed refrigerant. As discussed in the preamble to the direct final rule (59 FR 42951), the revised standard differs from its predecessor, ARI 700–1988, in three main respects: (1) ARI 700–1993 includes eleven additional refrigerants, (2) ARI 700–1993 doubles the permissible water levels in liquid phase R–11 and R–113, and (3) where ARI 700–1988 allowed 0.5 as the maximum percentage by weight of "other refrigerants," ARI 700–1993 allows 0.50 as the maximum percentage by weight of "all other organic impurities, including other refrigerants."

Also as noted in the direct final rule, EPA made the change to the reclaimer certification provisions to maintain consistency between these provisions and the definition of reclaim. The revised provisions were intended to apply to reclaimers who became certified for the first time after October 18, 1994, the effective date of the direct final rule. EPA did not intend to require refrigerant reclaimers who had already been certified to become certified again. However, certified reclaimers have pointed out that the revised provisions could be interpreted to require recertification.

EPA considers such recertification unnecessary. As stated in the preamble to the final rule, the goal of reclaimer certification is to ensure that reclaimers are "fully aware of the regulations regarding reclaimed refrigerant" (58 FR 28700). Certified reclaimers have already demonstrated, through their original certifications, that they are aware of most of the regulations regarding reclaimed refrigerant, including the basic requirements to purify and analyze the refrigerant, to limit emissions to 1.5 percent of the refrigerant reclaimed, and to dispose of wastes from the reclamation process in accordance with all applicable laws and regulations. The only requirements of which they may not be aware are the changes to the ARI 700 standard enumerated above. Any failure to accommodate these changes, while undesirable, is not likely to have a significant adverse environmental or economic impact.[2] In fact, one of the changes represents a relaxation of the ARI 700–1988 standard.

Moreover, based on information submitted by certified reclaimers and the Air-Conditioning and Refrigeration Institute (the industry standard-setting group that developed ARI 700–1988 and –1993), EPA believes that most certified reclaimers either are aware or can be made aware of the new standard without recertifying. For instance, many reclaimers either participated in the development of ARI 700–1993 standard themselves or work with analytical laboratories that participated in the development of the standard. In addition, EPA plans to distribute copies of the direct final regulation, which includes the updated standard, to all certified reclaimers.

Finally, EPA will be undertaking a rulemaking in the near future to address refrigerant purity and transfer issues generally. EPA will be considering changes to the reclaimer certification provisions at that time. This will give the Agency an opportunity to revisit the recertification issue, if necessary.

Thus, in order to clarify that certified refrigerant reclaimers need not recertify, EPA is adding a sentence to the reclaimer certification provisions that states "Persons who certified under § 82.164 before October 18, 1994, need not recertify under this section."

5. Comments Outside the Scope of This Rulemaking

EPA received some comments that related to issues outside the scope of this rulemaking. One commenter advocated requiring certification of persons who dispose of small appliances. This commenter argued that disposers might not only release refrigerants, violating Clean Air Act requirements, but could be "liable as cogenerators" under other environmental statutes. EPA did not intend to request comment on whether disposers should be certified in the proposed rule published August 15, 1994; the part of the proposed definition of technician that excluded disposers of small appliances was identical to that in the final rule published May 14, 1993. The rationale for this exclusion may be found at 58 FR 28705.

The same commenter recommended that all certification programs that conform to § 82.161 be eligible for state required continuing education credits for licensing. Although EPA believes that this may be a good idea, eligibility for state continuing education credits is determined by the states, not EPA.

One commenter stated that EPA should amend the rule to permit transfers of used, unreclaimed refrigerant among subsidiaries of the same company. This issue is outside the scope of this rulemaking. However, EPA plans to undertake a rulemaking in the near future that will address refrigerant purity and transfer issues. EPA will take the comment into consideration at that time.

III. Summary of Supporting Analysis

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

It has been determined by OMB and EPA that this amendment to the final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–602, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

EPA believes that any impact that this amendment will have on the regulated

[2] The one possible exception to this generalization is the broadening of the scope of the standard to include 11 additional refrigerants. If a new refrigerant was not reclaimed because the reclaimer did not know the purity standards for that refrigerant, the dirty refrigerant could harm air-conditioning and refrigeration equipment in which it was subsequently used. However, the 11 refrigerants added to the standard currently make up only a small fraction of the refrigerant that is reclaimed. Moreover, EPA believes that most certified reclaimers, when faced with a refrigerant whose purity standards they do not know, are likely to make an effort to discover these purity standards in order to retain their customers.

community will serve only to provide relief from otherwise applicable regulations, and will therefore limit the negative economic impact associated with the regulations previously promulgated under Section 608. An examination of the impacts on small entities was discussed in the final rule (58 FR 28660). That final rule assessed the impact the rule may have on small entities. A separate regulatory impact analysis accompanied the final rule and is contained in Docket A–92–01. I certify that this amendment to the refrigerant recycling rule will not have any additional negative economic impacts on any small entities.

C. Paperwork Reduction Act

Any information collection requirements in a rule must be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Because no additional informational collection requirements are required by this amendment, EPA has determined that the Paperwork Reduction Act does not apply to this rulemaking and no new Information Collection Request document has been prepared.

IV. Effective Date and Public Participation

This amendment is effective upon signature by the Administrator. This expedited effective date is necessary to effectuate the provision of the amendment extending the November 14, 1994 deadline for certification of technicians that successfully completed voluntary certification programs. The provisions regarding grandfathering do not place any significant burdens on affected parties prior to thirty days after publication, although programs that are disapproved for grandfathering will have to notify their participants within thirty days of EPA's disapproval of their application. The provision acts to allow grandfathering of voluntary certification programs previously barred under the regulations. The clarification of the scope of the technician requirements also should not place any burden on affected parties. The provision clarifies the scope of the activities covered by the certification and evacuation requirements. This relieves persons performing activities that might have been previously covered by the requirements from complying with the requirements. The apprenticeship exemption is similar. Given the lack of burden upon affected parties and the need to grant an immediate exemption from the November 14, 1994 deadline, the Agency finds good cause for expediting the effective date of the rule. EPA believes that this is consistent with 5 U.S.C. 553(d)(1) and (3).

Three provisions of this rule are being issued without notice and comment. The first provision corrects the typographical error in § 82.154(g) mistakenly citing the definition of "reclaimed" as § 82.152(g) instead of § 82.152(q). The error was introduced in the direct final rule of August 19, 1994 (59 FR 42950). The context of the citation makes it clear that this is an erroneous citation, thus raising no need for public notice of its correction. The Agency believes that this circumstance provides good cause to find public notice of this amendment unnecessary under sections 307(d) and 553(a)(3)(B).

The second provision adds MVACs to the exclusion of MVAC-like appliances from § 82.156(e). That section allows refrigerant to be returned to the appliance from which it is recovered or another appliance owned by the same person without being recycled or reclaimed. Applying § 82.156(e) to allow the return of refrigerant to MVACs without being recycled or reclaimed would directly conflict with the requirements for "properly using" equipment for servicing MVACs under section 609 of the Clean Air Act, as amended and EPA's implementing regulations. See § 82.30(e). This conflict was the reason that MVAC-like equipment was excluded from § 82.156(e) in the May 1993 final rule (59 FR 28708). The rationale applies even more strongly to MVACs themselves, which were erroneously omitted from the exclusion. This is a minor correction that merely eliminates the conflict between the two provisions and any resulting confusion over which provision governs. This correction does no more than clarify the regulations to be consistent with the section 609 regulations and the current general understanding throughout the industry. These circumstances provide good cause for the Agency to find public notice of this amendment unnecessary under sections 307(d) and 553(a)(3)(B).

The third provision clarifies the Agency's position on certification of reclaimers under § 82.164. In the August 19, 1994 direct final rule (59 FR 42950), EPA updated the refrigerant purity standards in accordance with the most recent industry standards, and set a new deadline of October 18, 1994 for reclaimers to be certified under these standards. The Agency intended this change to require reclaimers to certify under the new, rather than the old, standard, but only for those reclaimers that certified for the first time after the October 1994 effective date. It did not intend to require recertification of already certified reclaimers.

The deadline for certification under the new standard has already passed, and all reclaimers that have not recertified could be considered technically out of compliance. This makes it important for the Agency to clarify the coverage of the rule expediently, and makes the delay of a notice and comment rulemaking procedure contrary to the public interest. The Agency finds that these circumstances provide good cause under sections 307(d) and 553(a)(3)(B) to proceed with this rulemaking without public notice.

V. Judicial Review

Under Section 307(b)(1) of the Act, EPA finds that these regulations are of national applicability. Accordingly, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within sixty days of publication of this action in the **Federal Register.** Under Section 307(b)(2), the requirements of this rule may not be challenged later in judicial proceedings brought to enforce those requirements.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Hydrochlorofluorocarbons, Recovery and recycle, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Dated: October 28, 1994.

Carol M. Browner,

Administrator.

Title 40, Code of Federal Regulations, part 82, is amended to read as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Section 82.152 is amended by redesignating paragraphs (u) through (y) as (w) through (aa), redesignating paragraphs (b) through (t) as paragraphs (c) through (u), revising newly designated paragraphs (o), (s), and (z), and by adding new paragraphs (b), (v), and (bb) to read as follows:

§ 82.152 Definitions.

* * * * *

(b) *Apprentice* means any person who is currently registered as an apprentice

in service, maintenance, repair, or disposal of appliances with the U.S. Department of Labor's Bureau of Apprenticeship and Training (or a State Apprenticeship Council recognized by the Bureau of Apprenticeship and Training). If more than two years have elapsed since the person first registered as an apprentice with the Bureau of Apprenticeship and Training (or a State Apprenticeship Council recognized by the Bureau of Apprenticeship and Training), the person shall not be considered an apprentice.

* * * * *

(o) *Opening* an appliance means any service, maintenance, or repair on an appliance that would release class I or class II refrigerant from the appliance to the atmosphere unless the refrigerant were recovered previously from the appliance. Connecting and disconnecting hoses and gauges to and from the appliance to measure pressures within the appliance and to add refrigerant to or recover refrigerant from the appliance shall not be considered "opening."

* * * * *

(s) *Recover* refrigerant means to remove refrigerant in any condition from an appliance and to store it in an external container without necessarily testing or processing it in any way.

* * * * *

(v) *Refrigerant circuit* means the parts of an appliance that are normally connected to each other (or are separated only by internal valves) and are designed to contain refrigerant.

* * * * *

(z) *Technician* means any person who performs maintenance, service, or repair that could be reasonably expected to release class I or class II refrigerants from appliances, except for MVACs, into the atmosphere. Technician also means any person who performs disposal of appliances, except for small appliances, MVACs, and MVAC-like appliances, that could be reasonably expected to release class I or class II refrigerants from the appliances into the atmosphere. Performing maintenance, service, repair, or disposal could be reasonably expected to release refrigerants only if the activity is reasonably expected to violate the integrity of the refrigerant circuit. Activities reasonably expected to violate the integrity of the refrigerant circuit include activities such as attaching and detaching hoses and gauges to and from the appliance to add or remove refrigerant or to measure pressure and adding refrigerant to and removing refrigerant from the appliance. Activities such as painting the appliance, re-wiring an external electrical circuit, replacing insulation on a length of pipe, or tightening nuts and bolts on the appliance are not reasonably expected to violate the integrity of the refrigerant circuit. Performing maintenance, service, repair, or disposal of appliances that have been evacuated pursuant to § 82.156 could not be reasonably expected to release refrigerants from the appliance unless the maintenance, service, or repair consists of adding refrigerant to the appliance. Technician includes but is not limited to installers, contractor employees, in-house service personnel, and in some cases, owners.

* * * * *

(bb) *Voluntary certification program* means a technician testing program operated by a person before that person obtained approval of a technician certification program pursuant to § 82.161(c).

§ 82.154 [Amended]

3. Section 82.154 is amended by revising paragraph (g)(1); by removing paragraph (l); by redesignating paragraphs (m) through (o) as (l) through (n) respectively; by redesignating newly designated paragraphs (m)(2) through (m)(6) as (m)(3) through (m)(7) respectively; by adding paragraphs (m)(2) and (m)(8); and by revising paragraphs (m)(6) and (m)(7) to read as follows:

§ 82.154 Prohibitions.

* * * * *

(g) * * *

(1) The class I or class II substance has been reclaimed as defined at § 82.152(r);

* * * * *

(m) * * *

(2) The buyer has successfully completed a voluntary certification program requesting approval under § 82.161(g) by December 9, 1994. This paragraph (m)(2) expires on May 15, 1995.

* * * * *

(6) The refrigerant is contained in an appliance, and after January 9, 1995, the refrigerant is contained in an appliance with a fully assembled refrigerant circuit;

(7) The refrigerant is charged into an appliance by a certified technician or an apprentice during maintenance, service, or repair; or

(8) The refrigerant is charged into an appliance by a technician who successfully completed a voluntary certification program requesting approval under § 82.161(g) by December 9, 1994. This paragraph (m)(8) expires on May 15, 1995.

4. Section 82.156 is amended by revising paragraph (a) introductory text and by revising paragraphs (a)(1)(i), (a)(2)(i) introductory text, and (e) to read as follows:

§ 82.156 Required practices.

(a) Effective July 13, 1993, all persons disposing of appliances, except for small appliances, MVACs, and MVAC-like appliances must evacuate the refrigerant in the entire unit to a recovery or recycling machine certified pursuant to § 82.158. All persons opening appliances except for MVACs for maintenance, service, or repair must evacuate the refrigerant in either the entire unit or the part to be serviced (if the latter can be isolated) to a system receiver or a recovery or recycling machine certified pursuant to § 82.158. Effective January 9, 1995, certified technicians must verify that the applicable level of evacuation has been reached in the appliance or the part before it is opened.

(1) * * *

(i) Evacuation of the appliance to the atmosphere is not to be performed after completion of the maintenance, service, or repair, and the maintenance, service, or repair is not major as defined at § 82.152(k); or

* * * * *

(2)(i) If evacuation of the appliance to the atmosphere is not to be performed after completion of the maintenance, service, or repair, and if the maintenance, service, or repair is not major as defined at § 82.152(k), the appliance must:

* * * * *

(e) Refrigerant may be returned to the appliance from which it is recovered or to another appliance owned by the same person without being recycled or reclaimed, unless the appliance is an MVAC or MVAC-like appliance.

* * * * *

5. Section 82.161 is amended by revising paragraph (a) introductory text; by removing the word "Persons" and adding in its place "Technicians" in paragraphs (a)(2) through (a)(5); by revising paragraph (a)(1), by revising paragraph (g); and by adding paragraph (a)(6) to read as follows:

§ 82.161 Technician certification.

(a) Effective November 14, 1994, technicians, except technicians who successfully completed voluntary certification programs that apply for approval under § 82.161(g) by December 9, 1994, must be certified by an approved technician certification program under the requirements of this paragraph (a). Effective May 15, 1995,

all technicians must be certified by an approved technician certification program under the requirements of this paragraph (a).

(1) Technicians who maintain, service, or repair small appliances as defined in § 82.152(x) must be properly certified as Type I technicians.

* * * * *

(6) Apprentices are exempt from this requirement provided the apprentice is closely and continually supervised by a certified technician while performing any maintenance, service, repair, or disposal that could reasonably be expected to release refrigerant from appliances into the environment. The supervising certified technician is responsible for ensuring that the apprentice complies with this subpart.

* * * * *

(g)(1) Any person seeking approval of a technician certification program may also seek approval to certify technicians who successfully completed a voluntary certification program operated previously by that person. Interested persons must submit to the Administrator at the address in § 82.160(a) verification that the voluntary certification program substantially complied with most of the standards of § 82.161(c) and appendix D of subpart F of this part. If the program did not test or train participants on some elements of the test subject material, the person must submit supplementary information on the omitted material to the Administrator for approval and verify that the approved information will be provided to technicians pursuant to section j of appendix D of subpart F of this part. In this case, the person may not issue a certification card to a technician until he or she has received a signed statement from the technician indicating that the technician has read the supplementary information. Approval may be granted for Type I, Type II, or Type III certification, or some combination of these, depending upon the coverage in the voluntary certification program of the information in each Type. In order to have their voluntary programs considered for approval, persons must submit applications both for approval as a technician certification program and for approval as a voluntary program by December 9, 1994.

(2)(i) Persons who are approved to certify technicians who successfully completed their voluntary programs pursuant to § 82.161(g)(1) must:

(A) Notify technicians who successfully completed their voluntary programs of the Administrator's decision within 60 days of that decision;

(B) Send any supplementary materials required pursuant to § 82.161(g)(1) to technicians who successfully completed their voluntary programs within 60 days of the Administrator's decision; and

(C) Send certification cards to technicians who successfully completed their voluntary programs within 60 days of receipt of signed statements from the technicians indicating that the technicians have read the supplementary information.

(ii) Persons who are disapproved to certify technicians who successfully completed their voluntary programs pursuant to § 82.161(g)(1) must notify technicians who successfully completed their voluntary programs of the Administrator's decision within 30 days of that decision.

(iii) Persons who withdraw applications for voluntary program approval submitted pursuant to § 82.161(g)(1) must inform technicians who successfully completed their voluntary programs of the withdrawal by the later of 30 days after the withdrawal or December 9, 1994.

(3) Technicians who successfully completed voluntary certification programs may receive certification in a given Type through that program only if:

(i) The voluntary certification program successfully completed by the technician is approved for that Type pursuant to § 82.161(g)(1);

(ii) The technician successfully completed the portions of the voluntary certification program that correspond to that Type; and

(iii) The technician reads any supplementary materials required by the Administrator pursuant to § 82.161(g)(1) and section j of appendix D of subpart F of this part, and returns the signed statement required by § 82.161(g)(1).

* * * * *

6. Section 82.164 is amended by revising the introductory text to read as follows:

§ 82.164 Reclaimer certification.

Effective October 18, 1994, all persons reclaiming used refrigerant for sale to a new owner, except for persons who properly certified under this section prior to October 18, 1994, must certify to the Administrator that such person will:

* * * * *

7. Appendix D to subpart F is amended by revising section j to read as follows:

Appendix D to Part 82 Subpart F—Standards for Becoming a Certifying Program for Technicians

* * * * *

j. Grandfathering

EPA will grandfather technicians who successfully completed voluntary programs whose operators seek and receive EPA approval to grandfather these technicians, in accordance with § 82.161(g). As part of this process, these certifying programs may be required to send EPA-approved supplementary information to ensure the level of the technicians' knowledge. Technicians will be required to read this supplementary information as a condition of certification. The certifying programs will also issue new identification cards meeting the requirements specified above.

* * * * *

[FR Doc. 94–27532; Filed 11–9–94; 8:45 am]
BILLING CODE 6560–50–P

federal register

Wednesday
November 9, 1994

Part III

Environmental Protection Agency

40 CFR Parts 89 and 91
Control of Air Pollution; Emission Standards for New Gasoline Spark-ignition and Diesel Compression-ignition Marine Engines; Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 89 and 91

[FRL–5102–2]

RIN 2060–AE54

Control of Air Pollution; Emission Standards for New Gasoline Spark-ignition and Diesel Compression-ignition Marine Engines

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: Today's notice proposes emission standards for new gasoline spark-ignition and diesel compression-ignition marine engines. This action is required by section 213(a)(3) of the Clean Air Act as amended. The proposed standards for gasoline spark-ignition marine engines are expected to result in a 75 percent reduction in hydrocarbon (HC) emissions from outboard and personal watercraft engines. EPA proposes to phase-in HC emission standards for gasoline spark-ignition outboard and personal watercraft engines over a period of 9 years. The emission standards would be phased-in by equal yearly percentage emission reductions from a baseline curve (g HC/kW-hr vs. engine power) beginning with the 1998 model year through the 2006 model year. For gasoline spark-ignition sterndrive/inboard engines the emission standards would also become effective during the 1998 model year. Emission standards for oxides of nitrogen (NO_X) and carbon monoxide (CO) are also proposed for gasoline spark-ignition marine engines. EPA proposes to include marine diesel compression-ignition engines under the same regulatory framework as the land-based nonroad compression-ignition engines at or above 37 kW, with comparable NO_X reductions per engine of about 37 percent. Emission standards for HC, CO, NO_X, particulate matter (PM), and smoke are also proposed for compression-ignition marine engines.

DATES: Comments must be received on or before January 9, 1995. A public hearing will be held December 9, 1994, at 10 a.m.; requests to present oral testimony must be received on or before November 29, 1994.

ADDRESSES: Interested parties may submit written comments (in triplicate, if possible) for EPA consideration by addressing them as follows: EPA Air Docket (LE–131), Attention: Docket Number A–92–28, room M–1500, 401 M Street, SW., Washington, DC 20460. Materials relevant to this rulemaking are contained in this docket and may be reviewed at this location from 8:00 a.m. until noon and from 1:30 p.m. until 3:30 p.m. Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for photocopying. Unless otherwise notified through a notice in the **Federal Register**, the public hearing will be held in the conference room at the National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, MI 48105.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Zerafa, Office of Mobile Sources, Certification Division, (313) 668–4331.

SUPPLEMENTARY INFORMATION:

I. Obtaining Copies of the Regulatory Language

EPA has not included in this document the proposed regulatory language. Electronic copies (on 3.5" diskettes) of the proposed regulatory language may be obtained free of charge by visiting, writing, or calling the Environmental Protection Agency, Certification Division, 2565 Plymouth Road, Ann Arbor, MI 48105, (313) 668–4288. Refer to Docket A–92–28. A copy is also available for inspection in the docket (see **ADDRESSES**).

The preamble, regulatory language and regulatory support document are also available electronically on the Technology Transfer Network (TTN), which is an electronic bulletin board system (BBS) operated by EPA's Office of Air Quality Planning and Standards. The service is free of charge, except for the cost of the phone call. Users are able to access and download TTN files on their first call using a personal computer and modem per the following information.

TTN BBS: 919–541–5742 (1200–14400 bps, no parity, 8 data bits, 1 stop bit)
Voice Helpline: 919–541–5384
Also accessible via Internet: TELNET ttnbbs.rtpnc.epa.gov Off-line: Mondays from 8:00 AM to 12:00 Noon ET

A user who has not called TTN previously will first be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following menu choices from the Top Menu to access information on this rulemaking.

<T> GATEWAY TO TTN TECHNICAL AREAS (Bulletin Boards)
<M> OMS—Mobile Sources Information
<K> Rulemaking & Reporting
<6> Non-Road
<2> File area #1 . . . Non-Road Marine Engines

At this point, the system will list all available files in the chosen category in chronological order with brief descriptions. To download a file, select a transfer protocol that is supported by the terminal software on your own computer, then set your own software to receive the file using that same protocol.

If unfamiliar with handling compressed (i.e. ZIP'ed) files, go to the TTN top menu, System Utilities (Command: 1) for information and the necessary program to download in order to unZIP the files of interest after downloading to your computer. After getting the files you want onto your computer, you can quit the TTN BBS with the <G> oodbye command.

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

II. Table of Contents for Rest of Preamble
III. Statutory Authority and Background
A. Statutory Authority
B. Background
IV. Requirements of the Proposed Rule
A. Overview
B. Definition of Marine Engine
C. General Enforcement Provisions
D. Program Description and Rationale
1. Applicability
2. Emission Standards for Gasoline spark-ignition Outboard and Personal Watercraft Engines
3. Emission Standards for Gasoline spark-ignition Sterndrive Inboard Engines
4. Emission Standards for Compression-ignition Marine Engines
5. Crankcase Emission Controls
6. Compliance with Gasoline spark-ignition Marine Engine Emission Standards
7. Effective Dates for Certification
8. Model Year Designation
9. Engine Family Categorization
10. Certification Testing
11. Engine Family Certification
12. Durability Demonstration Requirements
13. Certification Test Procedure for HC, CO, NO_X, and PM
14. Certification Test Procedure for Smoke from Marine Compression-ignition Engines
15. Certification Test Fuel Requirements
16. Labeling Requirements
17. Manufacturer Self-Audit Program
18. Selective Enforcement Auditing Program
19. In-use Enforcement and Recall
20. Defect Reporting and Warranty Requirements
21. Tampering Enforcement
22. Importation of Nonconforming Marine Engines
V. Discussion of Issues
A. Choice of Exhaust Constituents to be Regulated
1. Gasoline spark-ignition Engines

2. Compression-ignition Engines
B. Water Quality Impacts/Scrubbing
C. Certification Durability Demonstration
1. Self Approval/In-use Testing Feedback Requirement Program
2. New Engine Standards/In-use Testing Requirement Program
3. Specified Service Accumulation Program
4. No Certification Durability Demonstration
D. Use of an HC Emission Standards Curve for Outboard and Personal Watercraft Engines
E. Options for Averaging Sets and Effect on HC Standards for Gasoline spark-ignition Marine Engines
F. Electric Outboard Motors
G. Level of HC Standard for Spark-ignition Outboards and Personal Watercraft Engines
1. Marginal Cost-Effectiveness Curve
2. Elasticity Effects
3. Leadtime and Phase-In Considerations
4. Level of NO_X Standard
5. Proposed Standards Fit Statutory Criteria
H. NO_X Emission Standards for Gasoline spark-ignition Engines and NO_X/HC Tradeoff
I. Effect of Available Technologies on Emissions and Performance from Gasoline spark-ignition Engines
1. Spark-ignition Outboard and Personal Watercraft Engines
2. Spark-ignition Sterndrive and Inboard Engines
J. Effect of Available Technologies on Emissions and Performance from Compression-ignition Engines
1. Types of Compression-ignition Marine Engines
2. Leadtime and Cost
3. Test Procedure
K. Representativeness of the Test Procedures
1. ISO E4 Cycle for Gasoline spark-ignition Marine Engines
2. ISO E5 Cycle for Propulsion Compression-ignition Marine Engines
3. ISO C1 Cycle for Marine Non-Propulsion Compression-ignition Engines
L. Safety/Noise/Energy Issues
1. Noise
2. Energy
3. Safety
M. Banking of Emission Credits for Gasoline Spark-ignition Marine Engines
1. Banking Unused Credits During the Phase-in Period for Future Use
2. Early Banking (Banking Prior to Phase-in Period)
3. Credit Life
4. Determiniation of Amount of Credit: Year of Use v. Year of Generation
5. Banking Restriction for Outboard/Personal Watercraft NO_X Emissions
N. Tracking Engine Sales to Point of First Retail Sale
O. Nonconformance Penalties for Marine Engines
P. New Vessels Must Incoporate New Engines
Q. Emerging Market Segments
VI. Cost Analysis
A. Gasoline Spark-ignition Engine Cost Analysis
1. Aggregate Annual Cost
2. Consumer Cost Summary
B. Compression-ignition Engine Cost Analysis
VII. Environmental Benefit Assessment
A. Gasoline Spark-ignition Engine HC Reduction
B. Diesel Compression-ignition Engine NO_X Reduction
C. Health and Welfare Effects of Troposhperic Ozone
D. Roles of VOC and NO_X in Ozone Formation
E. Smoke
VIII. Cost-Effectiveness
A. Gasoline Spark-ignition Engines
B. Diesel Compresion-ignition Engines
IX. Public Participation
A. Comments and the Public Docket
B. Public Hearing
X. Administrative Requirements
A. Executive Order 12886
B. Reporting and Recordkeeping Requirements
C. Impact on Small Entities

III. Statutory Authority and Background

A. Statutory Authority

Authority for the actions proposed in this notice is granted to EPA by sections 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act as amended [42 U.S.C. 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a)].

Section 213(a) of the Clean Air Act (CAA) directs EPA to: (1) conduct a study of emissions from nonroad engines and vehicles; (2) determine whether emissions of carbon monoxide (CO), oxides of nitrogen (NO_X), and volatile organic compounds (VOCs) from nonroad engines and vehicles are significant contributors to ozone or CO in more than one area which has failed to attain the national ambient air quality standards (NAAQS) for ozone or CO; and (3) if nonroad emissions are determined to be significant, regulate those categories or classes of new nonroad engines and vehicles that contribute to such air pollution. Under CAA section 213(a)(4), EPA may also regulate emissions other than CO, NO_X, and VOCs from new nonroad engines or vehicles if EPA determines that such other emissions contribute to air pollution that may reasonably be anticipated to endanger public health or welfare.

The Nonroad Engine and Vehicle Emission Study (hereafter, "Nonroad Study") required by section 213(a)(1) was completed in November 1991. The Nonroad Study is available in docket A–92–28. The determination of the significance of emissions from nonroad engines and vehicles in more than one NAAQS nonattainment area, required by section 213(a)(2), was published on June 17, 1994 (59 FR 31306). At the same time, the first set of regulations for a class or category of new nonroad engines that contribute to air pollution, required by section 213(a)(3), was promulgated. That rule controlled emissions from new nonroad compression-ignition engines (excluding marine engines) at or above 37 kilowatts (kW). EPA also has proposed emission standards for nonroad gasoline engines less than 19 kW used in lawn and garden equipment and in utility applications (May, 16, 1994, 59 FR 25399). Today's action continues to implement section 213(1)(3) and (4), by proposing emission standards for gasoline spark-ignition and diesel compression-ignition marine engines.

B. Background

Based on the results of the 1991 Nonroad Study, EPA has determined that emissions of VOCs, NO_X, and CO from nonroad engines and vehicles contribute significantly to ozone or CO levels in more than one NAAQS nonattainment area (see 59 FR 31306, June 17, 1994). As presented in the Nonroad Study, nonroad engines and vehicles contribute an average of 10 percent of summer VOCs in the 19 ozone nonattainment areas included in the study. Gasoline spark-ignition marine engines make up nearly 30 percent of these summertime nonroad VOC emissions and three-quarters of these gasoline spark-ignition marine engine HC emissions are from 2-stroke outboard engines. EPA therefore has determined that it is required to regulate new gasoline spark-ignition marine engines under Section 213(a) of the Clean Air Act.

EPA held a public workshop on July 29, 1992, to solicit information on technical characteristics, emissions, and general regulatory issues related to marine engines. Public notice of the meeting and comments submitted by interested parties can be found in the docket for this rulemaking (see ADDRESSES section at beginning of notice). Subsequent to the public workshop, EPA met several times with the National Marine Manufacturers Association (NMMA). NMMA has encouraged federal regulation of marine engine emissions, stating that the U.S. government should take the lead in developing emission standards and test procedures that could be a model for other countries. One of the marine industry's major concerns is that

without such a U.S. federal effort, a patchwork of different emission standards and test procedures would proliferate throughout the world, subjecting the manufacturers to excessive costs and administrative burdens resulting from the lack of harmonized standards and procedures. The marine engine manufacturers have been very helpful in providing EPA with information and data used in the development of a number of emission control options presented in this notice. Also, NMMA has presented to EPA their analysis of potential emission reduction strategies for marine engines. The documentation of NMMA's analysis can be found in the public docket.

The settlement of *Sierra Club* v. *Browner*, Civ. No. 93–0197 NHJ (D.D.C. 1993), requires EPA to propose emission standards for marine engines by September 30, 1994 (extended to October 30, 1994), and to promulgate final regulations by November 22, 1995. The time schedule resulting from this settlement has influenced a number of EPA decisions regarding regulatory options and proposals which are discussed in more detail in this notice.

In this notice, EPA is also proposing to set emission standards for new diesel compression-ignition marine engines. EPA promulgated rules for nonroad compression-ignition engines above 37 kW (59 FR 31306, June 17, 1994), but this rule did not include marine engines. During the development of that rulemaking, EPA decided to exclude marine propulsion engines and marine auxiliary engines because little information was available at the time to determine whether the test procedure was sufficiently representative of the operating cycle of marine engines and also because of uncertainty of how such regulations may impact, or conflict with, the U.S. Coast Guard safety requirements. EPA now believes that marine compression-ignition engines should be covered by the same regulation as other compression-ignition engines over 37 kW, with appropriate amendments pertaining to testing procedures.

EPA proposes to amend 40 CFR part 89 to include all marine compression-ignition engines below 560 kW manufactured after January 1, 1999 and all marine compression-ignition engines equal to or above 560 kW after January 1, 2000. Many of the marine engines used for auxiliary power are very similar in design and operation to land-based nonroad engines that are required to be certified under the existing nonroad large compression-ignition engine regulations. However, marine compression-ignition engines used for propulsion may be less similar in operation and design than land-based compression-ignition nonroad engines and require additional considerations for possible inclusion in 40 CFR part 89. These issues are discussed in greater detail in the issues section of this notice.

The International Maritime Organization (IMO), a subgroup of the United Nations is currently developing an agreement (in the form of the addition of a new annex to the Marine Pollution Convention (MARPOL 73/78)) to control emissions from ships on international voyages. Such an agreement would provide important measures to control emissions from ships that are outside U.S. territorial waters for which national standards could not apply. Efforts are being made by the EPA and the U.S. Coast Guard (who represents the U.S. at IMO) to ensure that test procedures and certification procedures are harmonized between the IMO regulations and national regulations. The IMO annex will cover new diesel marine propulsion and auxiliary engines used on ships on international voyages. The current proposal at IMO covers engines over 100 kW used on such ships. The current draft IMO annex is contained in the docket.

IV. Requirements of the Proposed Rule

The general provisions of the regulation are briefly described in the following section, and the rationale for key parts of the proposal is discussed. A more thorough discussion of issues raised in the rulemaking follows in Section V.

A. Overview

EPA proposes to regulate the emissions of exhaust pollutants for both new gasoline spark-ignition marine engines and new diesel compression-ignition marine engines. For gasoline spark-ignition marine engines, the primary focus of the regulations is to significantly reduce hydrocarbon (HC) emissions. For gasoline spark-ignition outboard and personal watercraft engines, EPA proposes average HC emission standards that are a function of the rated power of the engine and will result in a 75 percent reduction in HC emissions from current technology 2-stroke marine engines. A more complete explanation for this form of emission standard is given in Section IV(D)(2) of this preamble. For gasoline spark-ignition sterndrive and inboard engines, EPA proposes an average HC emission standard of 8.0 g/kW-hr. EPA also proposes average emission standards for oxides of nitrogen (NOx) of 6.0 g/kW-hr and 6.5 g/kW-hr for outboard/personal watercraft and sterndrive/inboard engines respectively. These standards are discussed in more detail in Section V. A carbon monoxide (CO) cap of 400 g/kW-hr is also proposed, although CO is of secondary importance for gasoline spark-ignition marine engines.

For new diesel compression-ignition marine engines, EPA proposes appropriate amendments to the existing nonroad compression-ignition engine regulations (40 CFR part 89) to include marine engines. This approach would thus subject marine compression-ignition engines to the same emission standard levels as required for other nonroad compression-ignition engines. The proposed emission standards are 9.2 g/kW-hr for NOx, 1.3 g/kW-hr for HC, 11.4 g/kW-hr for CO, 0.54 g/kW-hr for PM, and smoke standards of 20/50 maximum percentage opacity for acceleration/peak operating modes. These standards would apply to all new compression-ignition marine propulsion engines and auxiliary engines, regardless of power rating.

Today's proposal includes a compliance program involving pre-sale certification, assembly line testing, and in-use enforcement for both gasoline spark-ignition and compression-ignition marine engines. The proposed program would be similar to the existing compression-ignition nonroad regulatory program and include:

- designation of product line into groups of engines with similar emission characteristics (such groups are called engine families),
- averaging and trading program elements modified to suit the proposed emission standard levels and industry structure,
- manufacturer emission testing of selected engines with the specified test procedure to demonstrate compliance with emission standards,
- labeling of engines from each engine family,
- submission of application for certification for each engine family by model year,
- issuance of an emission compliance certificate for each engine family,
- prohibition against U.S. sale of engines not certified by EPA,
- recordkeeping and reporting requirements,
- EPA confirmatory certification testing,
- banking of unused emission credits for use in future model years,
- manufacturer production line testing backed-up by EPA Selective Enforcement Auditing (SEA),
- in-use testing and enforcement,

- warranty and prohibition on tampering, and
- importation provisions.

For new gasoline spark-ignition marine engines, EPA proposes that the effective date of the emission control requirements of these regulations begin in model year 1998. For gasoline spark-ignition outboard and personal watercraft marine engines, the stringency of the HC standards is proposed to be proportionately phased-in each year through model year 2006. Engines on average, will be required to meet a consistently lower standard for each year from model year 1998 to 2006.

For new diesel compression-ignition marine engines, the standards would be effective for engines up to 560 kW on January 1, 1999; for engines including and above 560 kW, the proposed effective date is January 1, 2000.

B. Definition of Marine Engine

EPA proposes to define marine engines as any engine which is used on a "vessel" as defined in 1 U.S.C.S. 3 (1992) for the purposes of propulsion and/or auxiliary power. The word "vessel" includes every description of watercraft or another artificial contrivance used, or capable of being used, as a means of transportation on water. This definition applies equally to gasoline spark-ignition and diesel compression-engines unless specifically stated otherwise.

Pursuant to section 203(b)(1) of the CAA, the Agency proposes categories of exemptions from new marine engine regulations similar to the existing exemptions for new nonroad compression-ignition engines at or above 37 kW (50 horsepower) (see 40 CFR, Part 89, Subpart I). These include exemptions for purposes of research, investigations, studies, demonstrations, training, or for reasons of national security. Exemptions are obtained either categorically, that is without application to the Administrator, or by submitting a written application to the Administrator. Export exemptions and manufacturer-owned engine exemptions are granted without application. Testing exemptions, national security exemptions, and exemptions for engines used solely for competition are obtained by application.

Exemptions are justified in these cases because the sources are limited in number or scope so no environmental harm results; the particular use of the source is determined to further air quality research; and/or the exemption is vital to the security of the nation. (See 39 FR 10601, March 21, 1974, for history of on-highway exemptions policy.)

C. General Enforcement Provisions

Any manufacturer of a gasoline spark-ignition or diesel compression-ignition marine engine would be responsible for obtaining from the Administrator a certificate of conformity covering any engine introduced into commerce in the United States before such an engine is sold, offered for sale, introduced or delivered for introduction into commerce, or imported into the United States. All such engines must comply with the standards promulgated in EPA's final regulations.

Section 213(d) of the Clean Air Act states that the Agency shall enforce new nonroad engine and vehicle standards in the same manner as on-highway vehicle and engine standards are enforced. [1] Therefore EPA is authorized to submit nonroad engines to certification requirements, assembly line testing, and in-use enforcement that apply to on-highway engines, with modifications that EPA deems appropriate. Section 213(d) also grants EPA the authority to revise or promulgate regulations as may be necessary to determine compliance with, and to enforce the nonroad standards. Further, EPA is authorized to prohibit certain acts, such as tampering with a certified engine.

Pursuant to this authority, the Agency is proposing today to require marine engine manufacturers to obtain certification and to subject them to manufacturer assembly line testing backed-up by selective enforcement auditing and in-use enforcement. The Agency is also proposing regulations for marine vessels that are similar to those for on-highway vehicles under sections 203, 204, 205, and 208 of the Act.[2] These general enforcement regulations include prohibitions contained in section 203(a); prohibited acts, if committed, subject persons to the assessment of civil penalties under section 205. As applied to nonroad engines under section 213(d), such acts include, but are not limited to, the introduction into commerce in the U.S. of marine engines which are not covered by a certificate of conformity issued by EPA, tampering with emission control devices or elements of design installed on or in a certified marine engine, and failing to provide information to the Agency if requested. The Agency is also proposing regulations under the authority of section 205 of the Act which sets forth the maximum statutory penalties for violating the prohibitions.

The Agency is proposing general information collection provisions similar to current on-highway provisions under section 208 of the Act which include, but are not limited to, the manufacturer's responsibility to provide information to the Agency, perform testing if requested by the Agency, and maintain records. In addition, EPA is proposing emission defect reporting regulations which require manufacturers to report to EPA emission-related defects that affect a given class or category of engines. The emission defect reporting regulations also specify procedural and reporting requirements for manufacturers that initiate voluntary emission-related recalls. The general information collection provision will also provide authority for EPA enforcement personnel to gain entry and access to various facilities under section 208.

EPA is authorized under section 217 of the CAA to establish fees to recover compliance program costs associated with sections 206 and 207. EPA will propose to establish fees for today's marine engine emission compliance program at some future time, after the program has been promulgated and associated costs are determined.

D. Program Description and Rationale

This section describes several features of EPA's marine engine emission compliance program and EPA's rationale for including these features in the program. Specific issues related to

[1] Section 213(d) of the Act provides that the standards under 213 "be subject to sections [206, 207, 208, and 209], with such modifications of the applicable regulations implementing such sections as the Administrator deems appropriate, and shall be enforced in the same manner as standards prescribed under section [202]. The Administrator shall revise or promulgate regulations as may be necessary to determine compliance with, and enforce, standards in effect under this section." Section 206 specifies requirements for motor vehicle and motor vehicle engine compliance testing and certification; Section 207 requires manufacturers to warrant compliance by motor vehicles and motor vehicle engines in actual use among other things; section 208 requires recordkeeping by manufacturers of new motor vehicles or new motor vehicle engines and authorizes EPA to require testing, collect information and require reports; and section 209 preempts states and political subdivisions from adopting or enforcing standards relating to emission control, certification, or inspection of new motor vehicles or new motor vehicle engines, and from adopting or enforcing emission control standards for certain new nonroad engines or new nonroad vehicles, unless specifically authorized to do so by EPA.

[2] Section 203 specifies prohibited acts and exempted motor vehicles; section 204 provides for federal court injunctions of violations of section 203(a); section 205 provides for the assessment of civil penalties for violations of section 203; and section 208 provides the Agency with information collection authority. The general enforcement language of section 213(d) provides the Agency's authority for applying sections 203, 204, 205, and 208 of the Act to nonroad engines and vehicles.

the proposed program which require in-depth discussion are presented in Section V "Discussion of Issues."

1. Applicability

i. Gasoline Spark-ignition Engines. Under the proposed regulations, all gasoline spark-ignition marine engines for a given manufacturer are included in determining compliance with the average standards for each year. Compliance is determined taking into account any trading or banking of emission credits.

ii. Diesel Compression-ignition Engines. Today's proposal covers all compression-ignition marine engines regardless of rated power. EPA proposes to require compression-ignition marine engines to meet the standards that new nonroad large compression-ignition engines at or above 37 kW are required to meet, with appropriate changes to test procedures as discussed in Section V.

EPA has not proposed to set a lower power rating limit of 37 kW or an upper power rating limit for marine engines. EPA solicits comments regarding whether such limits should be set and, if so, the levels at which they should be set and the reasons why they should be set at those levels.

As described in the background section of this preamble, the International Maritime Organization (IMO) is developing an agreement to control emissions from ships on international voyages. The largest diesel marine engines will most likely be covered by the IMO annex, as these engines are typically used on ocean going vessels which traverse international waters. However, some large engines and auxiliary power engines may be used on U.S. flag vessels that remain in internal waters (e.g., Great Lakes freighters). There is no clear engine cut-point in terms of power (kW) above which the IMO annex will cover and below which the national marine regulations will cover. Therefore, EPA is not proposing an upper limit for the application of the national regulations to control emissions from compression-ignition marine engines. EPA requests comments on whether an upper limit should be established and, if so, at what level and why.

iii. Alternative-fueled Marine Engines. EPA does not believe that new emission standards for marine engines will require increased use of alternative fuels. Test procedures and standards for alternative fuels require significant effort, which could not be completed by the court deadline for this rulemaking. Therefore, EPA proposes not to include test procedures or emission standards for alternative-fueled marine engines. EPA requests comment on the need for regulations and the potential for increased market share for marine engines that operate on alternative fuels such as electricity, natural gas, methanol, ethanol, or other alternative fuels. Commenters encouraging EPA to adopt alternative fuels standards and test procedures in this rule should review the alternative fuels rules for on-highway engines for information regarding how such rules would work.

2. Emission Standards for Gasoline Spark-ignition Outboard and Personal Watercraft Engines

i. Hydrocarbon Standards. EPA is proposing that manufacturers comply with corporate average emission standards requiring a 75 percent reduction in HC emissions from 1990 outboard and personal watercraft base levels when fully implemented. The standards would be phased-in over 9 years. Each year a manufacturer's fleet would need to meet a lower average emission standard. The standard would be a work specific emission rate limit (g/kW-hr) which is a function (curve) that varies with engine power. Compliance by a manufacturer's fleet as a whole is determined by comparing each engine family against the curve and summing the differences.

To derive the yearly compliance curves for the emission standards, EPA first had to calculate a base HC emission standards curve from which equally proportional reductions would be taken over the phase-in period. EPA proposes the following equation as the base HC emission standards curve:

$HC_{base}=151+557/P^{0.9}$ or 300 g/kW-hr, whichever is lower

where:

HC_{base}=hydrocarbon base emission standard in g/kW-hr P=rated power of the engine family in kilowatts.[3]

This function best fits the data provided by manufacturers for marine outboard and personal watercraft engines. With this functional format, the HC base emission standard is a function of the power rating of the engine family. However, EPA is also proposing that HC_{base} is not to exceed 300 g/kW-hr. The HC baseline curve is shown in Figure 1; also shown are the standard curves for the phase-in years, which are described in the following paragraphs.

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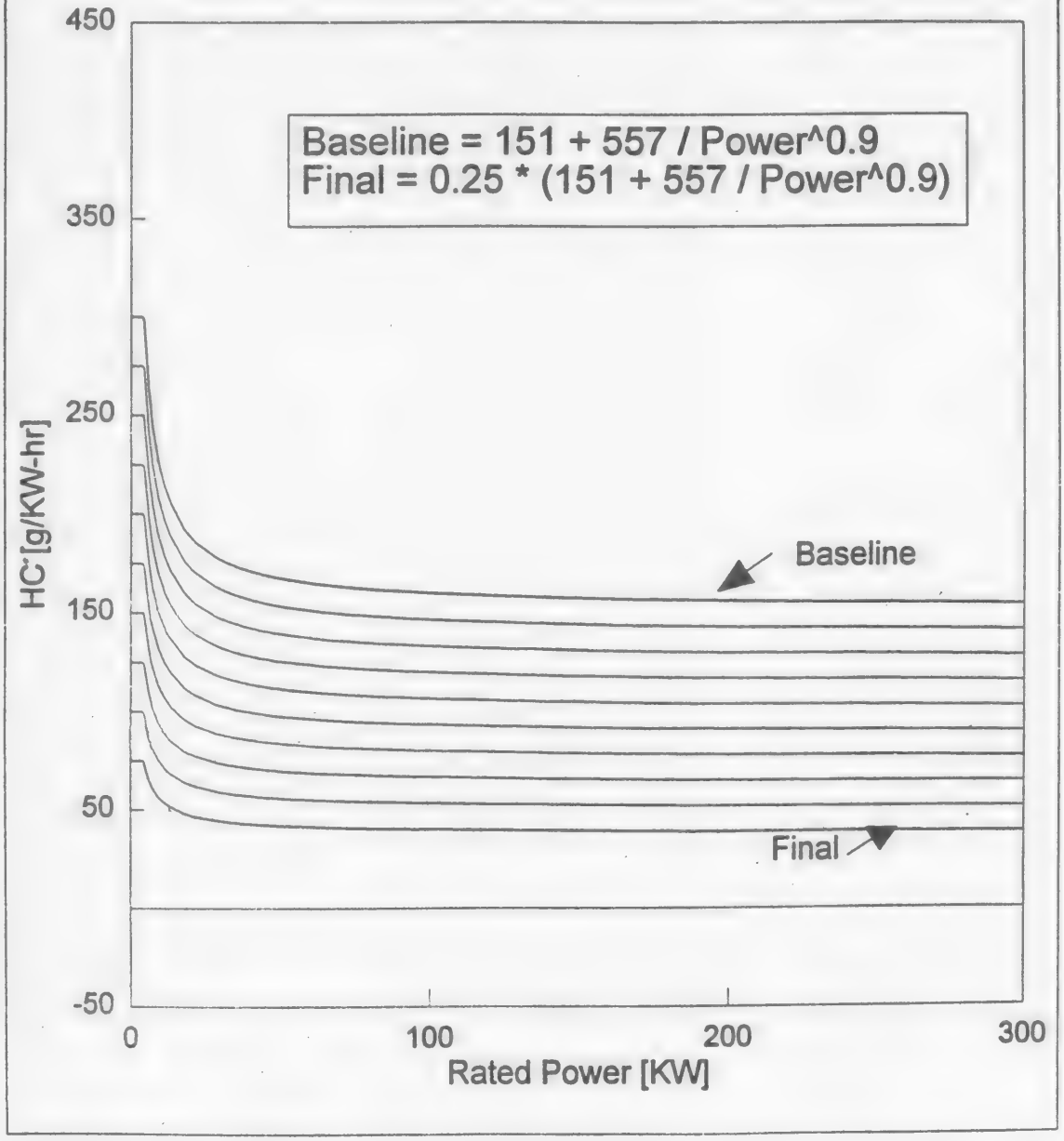
[3] Refer to issues section V.D. for a discussion of the HC baseline emission function.

Figure 1

HC Standard Curves for Outboard/Personal Watercraft



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The average HC standard curve for a given model year is determined by the product of the HC_{base} curve function and the model year factor as shown in Table 1. The model year factor reflects equal percentage reductions per year from the baseline over the nine year phase-in period, resulting in a 75 percent decrease when fully implemented. For example, the average HC emission standard in 2004 is the product of the 2004 HC model year factor, 0.417, and the HC_{base} function. The resulting average emission standard function for model year 2004 is as follows:

$$0.417 \times \left(151 + \frac{557}{p^{0.9}}\right)$$

or

$$62.97 + \frac{232.27}{p^{0.9}}$$

Also, given the limitation on HC_{base} of 300 g/kW-hr maximum, the 2004 emission standard may not be greater than 0.417×300=125.1 g/kW-hr.

TABLE 1.—GASOLINE SPARK-IGNITION MARINE ENGINES AVERAGE EMISSION STANDARDS

Model year	HC model year factor
1998	0.917
1999	0.833
2000	0.750
2001	0.667
2002	0.583
2003	0.500
2004	0.417
2005	0.333
2006 and after	0.250

ii. Oxides of Nitrogen Standards. EPA is also proposing NO_X emission standards for gasoline spark-ignition outboard and personal watercraft engines. EPA believes that the proposed corporate average standard level of 6.0 g/kW-hr is at a level appropriate for the types of technologies that will be used for meeting the stringent proposed HC standards. EPA proposes full implementation of the NO_X standard beginning with the 1998 model year without phase-in. However, EPA requests comment on whether or not a phase-in period would be appropriate, and if so, what length and why. However, EPA requests comment on whether or not a phase-in period would be appropriate, and if so, what length and why. EPA proposes not to allow banking of NO_X credits for outboard/personal watercraft engines during the phase-in years 1998 through 2005 (this is discussed in more detail in the issues section, item M(5)).

iii. CO standards (cap). EPA is also proposing to cap CO emissions at 400 g/kW-hr. This standard is the standard proposed for many utility engines (see 59 FR 25399, May 16, 1994). While some marine engines currently have CO emissions higher than this level, EPA expects that the standard can be met with small adjustments. When engines are controlled for HC, this CO standard will be easier to achieve. Therefore, every engine must meet the CO emission standard. The CO emission standard remains constant over the phase-in period and is set only to eliminate very high CO levels, which generally are far above the CO emission levels of most other engines sold. Most of the NAAQS nonattainment episodes for CO occur in the winter, while most boating activity in the U.S. occurs during the summer months, when CO air quality standards are rarely in nonattainment. However, very high levels of CO can have severe impacts on the health of users of such engines and in these cases boat design must be taken into account. Therefore, EPA requests comment on the need for CO control and on the proposed cap standard level.

3. Emission Standards for Gasoline Spark-Ignition Sterndrive/Inboard Engines

For gasoline spark-ignition sterndrive/inboard engines, the proposed corporate average standards for HC and NO_X are 8.0 g/kW-hr and 6.5 g/kW-hr respectively. These proposed standards are discussed in greater detail in Section V. As with outboard and personal watercraft engines, and for similar reasons, EPA is proposing to cap CO levels from such engines at 400 g/kW-hr.

4. Emission Standards for Diesel Compression-Ignition Marine Engines

EPA is proposing appropriate amendments to the existing nonroad compression-ignition engine regulations (40 CFR Part 89) to include all marine compression-ignition propulsion and auxiliary engines, regardless of power rating. This approach would thus subject marine compression-ignition engines to the same emission standard levels as required for new nonroad compression-ignition engines at and above 37 kW. The proposed emission standards are 9.2 g/kW-hr for NO_X, 1.3 g/kW-hr for HC, 11.4 g/kW-hr for CO, 0.54 g/kW-hr for PM, and smoke standards of 20/50 maximum percentage opacity for acceleration/peak operating modes.

5. Crankcase Emission Controls

In addition to the numerical exhaust emission standards, EPA proposes to prohibit direct emissions of crankcase vapors into the atmosphere for both gasoline spark-ignition and compression-ignition marine engines. Motor vehicles have been subject to an analogous requirement since the first steps of emission control regulation.

6. Compliance with Gasoline Spark-ignition Marine Engine Emission Standards

Compliance with the HC and NO_X emission standards is based on an averaging, banking and trading (ABT) provisions determined by calculating the lifetime engine emissions difference between the engine family emission level and the standard (compliance curve). At the end of each model year, each manufacturer must have as many or more emissions below the standards than above the standards for the manufacturer's product line (with allowances for trading and banking).

For a given engine family, the amount of emission credit or shortfall will be based on the difference in emission rate (g/kW-hr) between the family emission level (FEL) which is determined with the deterioration factor applied and the emission standard level (STD). The HC emission standard level for outboard and personal watercraft engines is calculated using the model year specific emission standard function. The function utilizes the rated power for the engine family to determine the emission standard level, in conjunction with the HC model year factor given in Table 1. The NO_X emission standard level for outboard and personal watercraft engines is proposed to be 6.0 g/kW-hr. For sterndrive and inboard spark-ignition engines, the emission standard levels (STD) are proposed to be 8.0 g/kW-hr for HC and 6.5 g/kW-hr for NO_X. The emission rate difference between the family emission level (FEL) (with deterioration factor applied) and the emission standard level (STD) is used to calculate the lifetime emission credit. To calculate lifetime emission credits, the following variables are necessary.

- FEL: Engine family emission limit
- STD: The model year specific emission standard level
- power: Power rating of the engine family
- load factor: Fraction of rated engine power utilized in-use, assumed to be 0.207 for all gasoline spark-ignition engines
- max useful life: Maximum useful life specific to the power rating and the application

- hours per year: Usage rate specific to the application
- sales: Consumption of engines in the U.S. for the engine family
- 0.03: Discount rate for all emissions
- S(t): Cumulative fraction survived at time t

The following equation is used to calculate credit generation and usage for a given engine family.

$$\sum_{t\ \text{equals}\ 1}^{\max\ \text{useful life}} \frac{S(t)\times\text{sales}\times(\text{STD}-\text{FEL})\times\text{power}\times\text{hours per year}\times.207}{1.03^{t}}$$

Credits are generated when the FEL is lower than the emission standard and are represented by positive numbers, while shortfalls (or credit usage) occurs when the FEL is above the emission standard and are represented by negative numbers.

EPA requests comment on the individual elements used in the equation above, specifically the following: estimates of maximum useful life according to power rating, survival probabilities, discount rate,[4] hours per year, and identification of U.S. sales. Refer to the benefits chapter of the Regulatory Impact Analysis for further information on useful life, survival probability, discount rate, and hours per year.

Manufacturers choose the FEL for each engine family based on testing and their estimate of deterioration. Each engine family must certify to the chosen FEL, and the FEL would be treated as the enforceable emission limit for certification, manufacturer assembly line testing, Selective Enforcement Auditing, and in-use testing.

Compliance with the emission standards will be determined by summing the positive and negative emission credits for all the manufacturer's engine families. For each model year, the manufacturer, at the models year's end, must have as many or more positive credits as negative for the manufacturer's product line. In other words, each manufacturer must maintain a positive or zero balance in their emission account with EPA.

Manufacturers would prepare an overall compliance strategy and submit an initial credit generation or usage report along with the application for certification for each engine family. To demonstrate compliance with the standards, the manufacturer would have to submit an end of the year report within 90 days of the end of the model year. The manufacturer would be allowed an additional 180 days after the end of the year reports are due to submit a final report for credit counting and calculation revisions. The end of the year report will contain the manufacturer's data on U.S. engine family sales to the point of first retail sale. EPA would adjust the manufacturer account balances to reflect the sales numbers contained in the final report. Certificates awarded to a manufacturer for its engine families could be rendered void *ab initio* if the manufacturer does not achieve an emission account balance greater than or equal to zero at the end of this time period.

When credits are generated and traded in the same model year, EPA proposes to make both buyers and sellers of credits potentially liable for accurate credit estimation, except in cases of fraud. This policy would provide additional incentives for buyers and sellers to take the steps necessary to ensure the integrity of the transactions and to place contractual liability on the appropriate party. EPA requests comment as to whether it should allow trading of emission credits during the model year in which they are generated. If credits are traded only after the end of year reports are finalized, the risk that the seller of credits would not have the full amount contracted in the account would be virtually eliminated.

In order to maintain the integrity of the balance of emissions for the new engine fleet, manufacturers must use accurate sales data when calculating credits which represent United States consumption of engines. Since engines sold to other countries, including Canada and Mexico, are excluded from this program, manufacturers are required to obtain data pertaining to engine sales to calculate accurate credit generation and usage. However, to ease the burden on manufacturers of tracking engines to the end user, manufacturers would only need to track engines to the location where the completed vessel or outboard engine is purchased, otherwise known as a point of first retail sale. In cases where the end user purchases the completed vessel directly from the manufacturer, the end user is the point of first retail sale. Alternatively, a boat dealer may be the point of first retail sale. Engine sales data pertaining to engines that have already been shipped to a point of first retail sale is also known as "first delivery" information.

7. Effective Dates for Certification

For gasoline spark-ignition outboard and personal watercraft engines, EPA proposes to phase-in average HC emission standards beginning with model year 1998. The HC emission standards would be phased-in through model year 2006, becoming more stringent each year. The definition of model year is discussed in the following section. The HC emission standards for gasoline spark-ignition sterndrive/inboard engines, along with the NO_x and CO emission standards for all gasoline spark-ignition marine engines are proposed to be effective with the 1998 model year, with no phase-in. However, EPA requests comments on whether or not the emission standards for gasoline spark-ignition sterndrive/inboard engines should include a phase-in period, and if so, what length and why.

In the NPRM for the Federal Implementation Plan for California (59 FR 23264), EPA proposed to allow personal watercraft manufacturers one additional year of leadtime. However, the standards proposed in today's notice were developed by analyzing emissions from outboard and personal watercraft as one category with a consistent phase-in period. Therefore, EPA is not proposing an additional year of leadtime in today's proposal for outboard/personal watercraft engines, but EPA is requesting comment on the necessity of an additional year of leadtime given the standards structure which contains provision for averaging and trading of emission credits with outboard manufacturers.

EPA proposes that diesel compression-ignition engines less than 560 kW meet the emissions standards beginning January 1, 1999, and those 560 kW and above meet the standards beginning January 1, 2000.

8. Model Year Designation

Section 202(b)(3)(A)(i) of the Clean Air Act defines the term "model year"

[4] Discount rate, as used here, refers to an appropriate rate for calculating present value of the useful life stream of emission credits generated. A discount rate of 3% is proposed because these are consumption goods.

with reference to any specific calendar year as "the manufacturer's annual production period (as determined by the Administrator) which includes January 1 of the calendar year. If the manufacturer has no annual production period, the term 'model year' means the calendar year."

In connection with the certification of on-highway engines and vehicles, EPA interprets the Act to define a model year as a period determined on an engine family by engine family basis including only one January 1.[5] EPA believes this meaning of model year is also appropriate for marine engines, because it allows manufacturers to retain the flexibility to introduce models at different times of the year. EPA includes this more detailed model year definition in the proposed regulations [§ 91.2] and requests comments on the appropriateness of this definition for marine engines. EPA requests comment on the relationship between the proposed model year definition and inventory issues, particularly left over inventory of engines at the end of the model year in the engine manufacturers possession. On-highway guidance documents on related stockpiling issues are contained in the docket for the readers reference.

9. Engine Family Categorization

For the purpose of demonstrating emission compliance, manufacturers of on-highway motor vehicles and/or large nonroad compression-ignition engines currently divide their product line into groups of engines called engine families. Engine families are composed of engines which have similar emission characteristics over their useful lives. EPA is proposing that gasoline spark-ignition marine and diesel compression-ignition marine engine families be determined using the same criteria (type of fuel, method of air aspiration, number of cylinders, and so forth) currently used to define on-highway engine families. EPA includes a more detailed description of engine family determinants in the proposed regulations [§ 91.116–98], and requests comments on the appropriateness of these determinants for marine engines.

For the same reasons, as explained in the nonroad large compression-ignition engine rule (59 FR 31306), a compression-ignition marine engine manufacturer could choose not to use the criteria to separate engines by number of cylinders and cylinder arrangement unless a manufacturer employs an aftertreatment device on its compression-ignition marine engines (see 40 CFR 89.116–96). This is necessary because the performance of an aftertreatment device can vary with the space velocity through the device. The space velocity will vary as the number of cylinders and cylinder arrangement vary. However, manufacturers have indicated aftertreatment devices will not be needed to meet the requirements in this proposal for compression-ignition marine engines.

10. Certification Testing

To obtain a certificate of conformity, all of the configurations within an engine family would be expected to meet each emission standard or family emission limit. Since it would be unreasonable to require that manufacturers emission test all engine configurations within an engine family to demonstrate compliance with the standards, EPA is proposing that one test engine from each engine family be selected and tested by the manufacturer. Choice of that test engine is discussed below.

i. Gasoline Spark-Ignition Engines. For gasoline spark-ignition marine engines, the engine selected for testing should be from the engine configuration the manufacturer expected to be the worst case hydrocarbon emitter. Since it may be difficult to determine which configuration is the worst case hydrocarbon emitter, EPA is proposing to use the criteria of brake-specific fuel consumption (BSFC) to determine which engine configuration within an engine family will be selected as the certification test engine. EPA believes that an engine configuration with high BSFC will generally emit higher levels of hydrocarbons and carbon monoxide than other configurations in the same engine family which exhibit lower BSFC. EPA solicits comments on the appropriateness of BSFC as the criterion to be used for selecting the certification test engine for a given engine family.

Although not proposed in today's notice, EPA also considered another alternative which would require the manufacturer to select and test the engine configuration expected to exhibit the highest hydrocarbon emission level using their own sound technical justification. EPA could verify the test results by confirmatory testing of this engine. EPA would also have the option to test or require testing of any available test engine representing other configurations in the engine family and review a manufacturer's technical justification to verify worst case selection. EPA solicits comment on the appropriateness of this approach for selecting the worst case hydrocarbon emitter.

ii. Diesel Compression-Ignition Engines. For diesel compression-ignition marine engines, EPA is proposing that the manufacturer must select one engine from each engine family which, at maximum power, has the greatest amount of fuel injected per injection stroke. This is the same criteria currently used for test engine selection for nonroad large compression-ignition engines used in land-based applications. EPA solicits comment on the appropriateness of this method of test engine selection for marine engines.

Before emission testing is carried out on marine compression-ignition engines, the manufacturer would perform service accumulation on each emission test engine over the dynamometer cycle of its choice based on good engineering practice (for example, a cycle representative of typical "break-in" operation of a new production engine in actual use). For each engine family, the manufacturer would determine the number of hours required to stabilize the emissions of the test engine. However, the number of hours which the manufacturer chooses may not be more than 125 hours. This limitation is necessary because on-highway experience has demonstrated that NO_x will decrease with hourly use for some engine family designs. The manufacturer should maintain, and provide in its application to the Administrator, a record of the rationale used in making the dynamometer cycle selection and the rationale used in making the service accumulation hours determination for emission testing.

iii. Both Gasoline Spark-Ignition and Diesel Compression-Ignition Engines. EPA proposes to allow manufacturers the flexibility to submit emission test data used to certify engine families in previous years in lieu of actual testing for current model year certification. This can be done to certify engine families similar to the previously certified engine family, provided these data show that the test engine would comply with the applicable regulations. This allows manufacturers the ability to "carry across" test data between similar engine families or to "carry over" test data from the same engine family from one year to another.

As in the case for on-highway vehicles and engines, the proposed regulations make it illegal for any person to use a device on a nonroad engine which senses operation outside normal emission test conditions and reduces the ability of the emission control system to control the engine's emissions. Such "defeat" devices would

[5] Bertelsen, Bruce I. Memo to Eric O. Stork, March 3, 1978.

render the proposed test procedures inadequate to predict in-use emissions. To guard against use of these devices, EPA would reserve the right to audit test a certification test engine, or require the manufacturer to perform such testing over a modified test procedure if EPA suspects a defeat device is being used by an engine manufacturer on a particular engine.

Engines equipped with adjustable operating parameters would have to comply with all the regulations with the parameters adjusted to any setting in the full range of adjustment. For example, a maximum fuel system pressure screw that is readily adjustable with a screwdriver or wrench could be adjusted by EPA to any setting within its adjustable range for emission testing. This ensures that changes to the adjustable operating parameters that can readily occur in-use will not cause the engine to fail to comply with these regulations.

11. Engine Family Certification

Upon approval by the Administrator, an emission compliance certificate would be issued by EPA for each engine family. The engine manufacturer must submit an application to EPA requesting a certificate of conformity for each engine family every model year, as required by the CAA.[6] Applications must be submitted every model year even when the engine family does not change from the previous certificate, although representative test data could be reused in the succeeding year's application. However, EPA is proposing the option of a letter notifying EPA of carryover and the next year's projected sales in lieu of the full certification application.

The application would give EPA sufficient information regarding test results, deterioration factors, emission control system description, and other information necessary for determining compliance with the emission standards. The application would allow EPA to determine compliance with the applicable emission standards in a timely manner. It is important that the engine manufacturer succinctly, fully, and accurately submit all pertinent information to EPA and maintain internal records which can be easily accessed if such access is determined necessary by EPA.

If changes to an engine family configuration occurred that caused the changed version to be the engine family's worst case emitter, then emission testing of the changed version would be required. Manufacturers would be expected to conduct emission testing if proposed changes could cause an increase in emissions. Additionally, the Administrator could require a manufacturer to conduct testing to demonstrate compliance.

12. Durability Demonstration Requirements

Marine engines for which a certificate of conformity has been granted are expected to meet the emission standards not only when the engines are new, but also throughout their useful lives. Therefore, as described in the following, EPA is proposing emission control durability requirements as part of the certification process.

i. Gasoline Spark-ignition Engines. For gasoline spark-ignition engines used for on-highway applications, EPA's experience indicates that emission control efficiency generally decreases with the accumulated use of the engine. However, it is believed that much of this deterioration results from deterioration of the catalysts that are used on these vehicles. EPA does not have sufficient data for determining if the types of marine emission control technologies expected to be used to meet the requirements of this rule (such as, direct injection) will be durable during the useful life of the engines. Since EPA views this rulemaking as a long term strategy to reduce emissions from gasoline spark-ignition marine engines, and new technologies with unknown emission control durability will be used by manufacturers to meet the standards, a demonstration of emission control durability is necessary during the certification process.

For gasoline spark-ignition marine engines, EPA is proposing a durability demonstration program similar to that used for gasoline spark-ignition on-highway heavy-duty engines. This program includes a requirement that for each engine family, the manufacturer shall determine emission deterioration factors for each pollutant based on testing of engines, subsystems, or components and/or sound technical judgment. The deterioration factors would be submitted to EPA and applied to the new engine emission results (as proposed in 91.105 of the regulations) to determine compliance with the emission standards. The deterioration factors would be required to simulate deterioration for 350 hours of use for all gasoline spark-ignition marine engines. These factors would also be expected to simulate deterioration over a period of 10 years for all gasoline spark-ignition engines except personal watercraft, which would be expected to simulate 5 years. As a check of the adequacy of the methodologies used to determine the deterioration factors, EPA will use data from the recall testing program. See section 19 regarding in-use testing and recall for further discussion of these program elements.

EPA has considered an additional feature, although not proposed in today's notice, which would require the engine manufacturer to procure and test a sample of in-use engines covered by a certificate and submit the data to EPA as a condition of certification. The in-use data would be used to assess the adequacy of the methodology used by the manufacturers to determine deterioration factors.

Under this feature, a manufacturer's failure to fully execute the in-use tests will be considered a failure to satisfy the conditions under which the certificate is issued. An engine will be considered to be covered by the certificate only if the manufacturer fulfills the conditions upon which the certificate was issued. Thus, failure to satisfy the conditions of the certificate for this reason may subject a manufacturer to similar penalties as any other type of violation of the certification conditions. Although not proposed in today's notice, EPA requests comments on requiring an in-use testing program as a condition of certification as well as the appropriateness of such a program for the stated purposes.

ii. Diesel Compression-ignition Engines. EPA is proposing no requirements for the submission of durability demonstration test data or use of a deterioration factor when certifying engine families that do not employ aftertreatment. For on-highway vehicle certification, EPA has found that NO_x emissions from compression-ignition engines experience very little, if any, increase over time. Therefore, EPA believes that requiring durability demonstration test data and deterioration factor requirements during certification would impose an unnecessary cost burden on manufacturers.

Should a manufacturer choose to use exhaust aftertreatment to meet the emission standards for any engine family, deterioration factors would have to be determined and applied in the same manner as is currently done for on-highway compression-ignition engine durability demonstration. However, no durability demonstration or deterioration factors are required by this rule when an engine that was certified without aftertreatment is later retrofitted with an aftertreatment device

[6] Section 206 of the Clean Air Act requires certification on a yearly basis. This has been interpreted to mean certification for each model year, as defined in section 202(b)(3)(A)(i) of the CAA and in § 91.1 of the proposed regulations.

or package. These retrofits are not designed to interfere with the original design and, therefore, should not result in worse emissions than the original design. Since the engine has already been demonstrated to be in compliance without the aftertreatment device, demonstration of the durability of a retrofitted aftertreatment device is not necessary.

13. Certification Test Procedure for HC, NO_X, CO, and PM

The proposed marine engine certification test procedure for gasoline spark-ignition engines will be based on the steady state test cycle developed by the International Council of Marine Industry Associations (ICOMIA) as described in Society of Automotive Engineers (SAE) Paper 901597. This cycle is named E4 by the International Standards Organization (ISO) and is contained in test procedure ISO 8178–4. EPA requests comments on the appropriateness of the E4 cycle for testing gasoline spark-ignition marine engines.

The proposed test cycle for diesel compression-ignition marine propulsion engines is the ISO E5 steady state test procedure developed from operational data supplied by Volvo and the Norwegian government. However, as more fully described in Section V, EPA requests comments on the appropriateness of the ISO E3 cycle for compression-ignition marine engines. Although the E5 cycle is proposed in today's notice, EPA is also seriously considering the E3 cycle, and the final rule may require the E5 or the E3 depending on the analysis of comments received on this issue in response to the proposed rule.

EPA is proposing the ISO C1 cycle for compression-ignition marine auxiliary engines. EPA believes that this cycle is more representative of the type of operation these engines experience in use than the E5 or E3 cycles. However, as described in more detail in Section V, EPA requests comment on the appropriateness of the ISO D2 cycle for both compression-ignition marine auxiliary engines and compression-ignition generator sets used for nonroad land-based applications.

EPA believes that most marine engine operation is well represented by steady state test cycles. However, preliminary data shows that certain emissions, such as hydrocarbons from inboard/sterndrive (gasoline spark-ignition) marine engines, are highly sensitive to transient operation. EPA has not yet gathered enough data to determine whether a transient test procedure would be appropriate for marine engines. For this reason, the marine steady state test cycles are being proposed for this rulemaking. EPA requests comments on all the test cycles proposed in today's notice as well as other test cycles that may be appropriate with a discussion of why they may be more appropriate than those proposed.

EPA is proposing to allow the use of either the raw gas (raw) or constant volume sampling (CVS or dilute) method of emission sampling for exhaust gas emission measurement from gasoline spark-ignition marine engines.

EPA's past experience with automotive engines has been to perform emission testing using the CVS method. For engine exhaust gas testing in general, EPA believes the CVS method to be more accurate and repeatable. EPA recognizes the difficulties of dilute sampling for outboard marine engines and recognizes that all marine engine manufacturers testing laboratories are currently using raw sampling to measure emissions from outboards. These difficulties include possible compromising of the exhaust tuning and the unknown effects on emission results of the cooling water mixing with the exhaust. Therefore, this proposal will allow raw sampling for these engines. Although, EPA is unaware of any dilute testing having been performed on an outboard marine engine, dilute testing of outboard exhaust is still being considered as an option. One suggestion is that the power-head could be removed from the gearbox for emission testing. If the appropriate exhaust backpressure were known and applied to each test mode, then dilute sampling would be feasible. EPA requests comments on the appropriateness of power-head testing for outboard marine engines.

Testing at EPA's National Vehicle and Fuel Emissions Laboratory (NVFEL) has shown that inboard marine engines can be tested using dilute sampling by blocking off (and re-routing) the cooling water in the exhaust manifold and extracting the total exhaust. However, EPA recognizes that all of the marine data used in generating the baseline emissions inventory for sterndrive and inboard engines, as well as outboard and personnel watercraft engines, is based on emission measurements taken using the raw gas sampling method. EPA believes it would be inappropriate to require marine engines to be sampled using the CVS method at this time without additional data which indicates marine engines can not be sampled accurately using the raw gas method.

EPA requests comments on the appropriateness of dilute or raw sampling for emission testing of marine engines.

14. Certification Test Procedure for Smoke from Diesel Compression-ignition Marine Engines

EPA is proposing that compression-ignition marine engines comply with the proposed smoke standards by using a smoke test procedure similar to the current on-highway heavy-duty engine smoke test procedure described in 40 CFR part 86, subpart I. Though, specifically designed for on-highway truck engines, at this time is the most applicable test.

The subpart I smoke test procedure cycle consists of an idle mode followed by an acceleration and deceleration, followed by another acceleration and an engine loading mode down to peak torque. This simulates a truck starting from rest, performing a gear shift, and then pulling a heavy load up a reasonably steep grade. EPA does not consider this "lugging" mode to be representative of in-use marine operation. Therefore, the smoke test procedure will be modified so that the lugging mode will not be applied to marine engines. In this aspect, the smoke test procedures are modified in this regulatory proposal.

EPA believes that these modified subpart I procedures are reasonable for compression-ignition marine engine smoke control within the proposed timeline. While marine applications experience some differences in operation compared to on-highway applications, EPA has determined that the same technologies will be used to control smoke in nonroad applications as are used in on-highway applications. EPA has determined that the modified subpart I procedures will provide the smoke reduction desired from certified marine engines. Therefore, the differences in marine and on-highway operation with respect to smoke generation are not large enough to hold up this proposal for the significant time period required to make changes.

EPA proposes this procedure for marine engines because it brings these engines under the same regulatory framework that currently governs nonroad compression-ignition engines at or above 37 kW. EPA requests comments on the appropriateness of applying this procedure to marine engines. Particularly, EPA requests comment on the need for a smoke test procedure for compression-ignition marine auxiliary engines. EPA may consider excluding such engines from the smoke requirements pending the response to today's proposal.

15. Certification Test Fuel Requirements

EPA is proposing test fuel properties that will ensure that fuel used for emission testing is representative of commercially available marine fuel. Because most of the fuel used in gasoline spark-ignition marine engines is the same fuel sold for automotive applications, the certification test fuel for gasoline spark-ignition marine engines will be similar to the baseline gasoline fuel defined in section 211 of the 1990 Clean Air Act Amendments. For two-stroke gasoline spark-ignition engines, when required, two-stroke oil will be mixed into the certification fuel according to the ratio recommended by the engine manufacturer. The oil grade for testing two-stroke engines will be TCW3 provided that the manufacturer recommend this oil in the owner's manual, otherwise, TCW2 oil shall be used. For compression-ignition engines, the grade of diesel fuel commercially designated as "Type 2–D" would be used, as is the regulatory requirement for other nonroad compression-ignition engines.

The manufacturer would be required to ensure that the properties of the test fuel used for all certification and compliance testing be within the ranges specified in § 91.308 of the proposed regulations. A manufacturer could use any commercially available marine fuel that stays within the proposed regulatory specifications for its certification tests. However, the engine family would be required to be able to comply with the proposed emission standards when any other commercially available marine fuel within these specifications is used. Therefore, EPA would reserve the right to choose any commercially available marine fuel within the regulated specifications for certification, manufacturer assembly line, SEA, or in-use compliance testing.

16. Labeling Requirements

EPA is proposing that manufacturers label each engine and that the label meet the same requirements with respect to durability, visibility, and information as required in the current on-highway heavy-duty engine and the nonroad large compression-ignition engine certification label requirements.[7] In addition, EPA is proposing that each engine must have a unique engine identification number which may be part of the engine label or engraved on the engine. Such identification is necessary for tracking engines for the manufacturer assembly line testing, the Selective Enforcement Auditing, import, and recall programs. EPA requests comment on this proposal as well as on current engine identification practices within the industry.

EPA is also proposing a voluntary labeling program for manufacturers of gasoline spark-ignition engines who produce engines that meet or exceed the final model year 2006 phase-in period HC emission standards. A label such as this could assist states and local areas in the development of programs to encourage the turn-over of older, higher polluting engines, since this label would identify the cleanest engines to replace older engines. This label would contain the words "Green Engine" and would state that the engines emissions are below the federal standard for HC planned for model year 2006. EPA requests comment on how such a voluntary labeling program could be implemented and on the content of the label.

17. Manufacturer Self-Audit Program

EPA is proposing that manufacturers of spark-ignition marine engines and compression-ignition marine engines perform self-audits of new marine engines. The self-audit program would be an emission compliance program for new production marine engines in which manufacturers would be required to test engines as they leave the assembly line, without EPA oversight. The objective of the self-audit program is that manufacturers and EPA could determine, with reasonable statistical certainty, whether or not new engines are in compliance with the regulations.

The manufacturer self-audit program would be the main assembly-line emission test program for marine engines. The Selective Enforcement Auditing (SEA)[8] program will serve a spot-check function and enable EPA to evaluate testing practices used by the manufacturer and follow-up on concerns EPA may have with regard to a particular engine family.

EPA believes that a post-production compliance program is necessary to verify that production engines comply with applicable regulations. A reliable new engine testing program is particularly vital in a regulatory situation in which manufacturers participate in an averaging, banking, and trading program and receive usable or salable credits for declaring FELs below standard. A self-audit program would reduce the need for an SEA program by providing a means to test a portion of production engines from each manufacturer as they came off the assembly line. All self-audit emission test results, statistical calculations to determine compliance levels, and quarterly production figures would be reported electronically to EPA. EPA would review self-audit data and procedures used in acquiring the data to assess the validity and representativeness of each manufacturer's self-audit program.

One new engine testing scheme which would be acceptable to EPA for any manufacturer is CARB's current Quality Audit Program for new utility and lawn and garden engines. This program assures that engines from each engine family will be tested periodically and their compliance evaluated on a quarterly basis. This program also provides for greatly reduced testing when sufficient engines are within standards to pass a statistical evaluation or when the production volume of an engine family is below a prescribed minimum level.

EPA recognizes the need to develop a testing scheme or several schemes to provide assurance that new engines are meeting standards while minimizing burden on the manufacturers. Marine engine manufacturers have indicated that unique characteristics of the industry may warrant testing schemes that reflect this diversity. EPA intends to develop manufacturer self-auditing programs which take into account the needs of this industry. This testing scheme or set of schemes could replace CARB's Quality Audit Program which is outlined in subpart F: "Manufacturer Self-Auditing" of the draft regulatory language. EPA believes that alternative plans may be developed that better account for the needs of this industry.

EPA would prefer to implement one or a few testing schemes which accommodate production differences between manufacturers or across engine families where the validity of the scheme(s) is established prior to promulgation. This will provide greater assurance to the public that this rule will result in new engines that meet standards and provide more consistency and equity between similarly situated manufacturers.

EPA recognizes that unique circumstances surrounding a low production engine family or a very specialized engine family could necessitate an individual plan. Consequently, we are providing an option in this proposal for such a plan in special cases.

In any manufacturer self-audit program, if an engine family is found to

[7] See 34 FR 12633 (August 2, 1969) where labeling requirements for new motor vehicles and new motor vehicle engines were originally proposed.

[8] SEA is a program in which EPA selects engines from one engine family configuration, directly from the assembly line, for emissions testing.

be in noncompliance or the engine manufacturer's submittal revealed that the assembly-line self-audit tests were not performed in accordance with the applicable testing scheme, the Administrator may suspend or revoke the manufacturer's certificate of conformity in whole or in part for that engine family. The manufacturer must then address the engines produced prior to the suspension or revocation of the certificate of conformity. EPA will notify manufacturers of the suspension or revocation of the certificate of conformity within 10 days of the nonconformity determination. To have the certificate reinstated subsequent to a suspension, or reissued subsequent to a revocation, the manufacturer would be required to demonstrate through its self-audit program, that improvements, modifications, or replacement had brought the engine or family into compliance. The proposed regulations include hearing provisions which allow the manufacturer to challenge EPA's suspension or revocation decision based on application of the statistical criteria or the manner in which tests were conducted.

EPA does not intend to routinely test, under the SEA program, the engines of a manufacturer that has a comprehensive and effective self-audit program. The Agency requests comment on possible designs of assembly-line testing programs that may reduce the testing burden on manufacturers, be more effective and less costly.

18. Selective Enforcement Auditing Program

EPA is proposing to implement a Selective Enforcement Auditing (SEA) program of spark-ignition and compression-ignition marine engines as authorized by section 213 of the Clean Air Act. The marine engine SEA program would be a secondary emission compliance program for new production marine engines in which manufacturers would be required to test engines as they leave the assembly line, with EPA oversight.

The SEA program would typically be employed when EPA determines that the results of the manufacturer self-audit program reveal noncompliance or when EPA determines that other evidence of suspected noncompliance by the manufacturer exists. In addition, SEAs will be utilized as a spot-check to enable EPA to evaluate testing practices used by the manufacturer, follow-up on concerns reported to EPA, and address any configurations not covered by manufacturers in their self-audit testing program. The SEA program strives to encourage manufacturers to perform proper self-auditing and promptly remedy an emission noncompliance that it may discover.

Manufacturers would be notified of an SEA by means of a test order. This test order would specify the engine family to be audited. EPA might also specify one or more engine configurations from a family to be audited. To minimize the burden on manufacturers, EPA would consider requests by manufacturers to exclude particular engines or engine configurations from a test sample. Justification for such requests could be a manufacturer's desire to avoid a delay in shipment of urgent customer-ordered engines or to minimize test cell set-up time by selecting engines of similar physical configurations.

Test orders would include information relevant to the SEA. The test order would indicate any specific procedures, such as the time to begin selecting engines, to be followed during the course of the audit. Additionally, the test order would authorize EPA enforcement officers, upon presentation of enforcement credentials, to inspect engine production, test facilities, storage facilities, and records necessary to demonstrate compliance with marine regulations.

Engines for SEA would typically be selected from a point of final engine assembly or from a storage or shipping facility. Most often, this selection point would be at the end of the engine assembly line. The location of these selections could be designated by the manufacturer to minimize disruption and shipping costs.

EPA proposes to include ports of entry or storage locations in the United States as locations for EPA selection of foreign-produced marine engines for SEA emission testing at laboratories in the United States. In this rule, EPA is proposing that SEAs will not likely be conducted unless a manufacturer's self-audit program indicates non-conformity or unless EPA has reason to believe that test procedures are not in accordance with the applicable testing scheme. If EPA initiates an SEA of a foreign manufacturer, these audits will be most easily and expeditiously conducted in the U.S. EPA anticipates that engines would be selected at a port of entry and the foreign manufacturer would then conduct emission testing at its test facility in the U.S. or be responsible for contracting for testing at a U.S. facility. EPA would allow the manufacturer reasonable time to locate a contract testing facility in the U.S. and to schedule such testing. EPA requests comments on the port selection aspect of the SEA program.

Engines for SEA could not receive any additional inspections or quality control other than that of normal production engines and pre-test safety checks. Engines would be tested in the same order as they were selected.

Prior to testing SEA engines, manufacturers could operate engines to break-in engine components. This break-in or service accumulation of an SEA engine family would follow the same procedures as certification and could be up to the same number of break-in hours accumulated for that family's emission data engine during certification.

Audit engines would be tested using the same test cycle as was used in certification; however, deviations allowed in certification from the full test procedures would not necessarily be permitted in SEAs.

EPA is proposing that marine engines will be selected for SEA tests at a rate of at least four engines per day, unless production is less than four engines per day. To minimize delays in shipment of engines to customers, manufacturers could test the first engines selected for an audit while additional engines were produced.

The total number of engines tested in an SEA would be dictated by the number of engines required to reach the statistically acceptable pass/fail decision within the sampling plan applied. EPA is proposing a sequential sampling plan for marine engine SEAs. These sampling plans have been designed to meet a 40 percent Acceptable Quality Level (AQL) and to ensure low statistical risks of incorrect pass/fail determinations. The maximum theoretical percentage of failing engines for passing an SEA is 40 percent. EPA is proposing a 40 percent AQL for the marine engine SEA program. EPA has used this AQL since the 1970s for the on-highway program, and has also promulgated it in the large compression-ignition nonroad engine rule. EPA currently has no reason to propose a different AQL for this program. EPA is proposing that the marine engine SEA program use the same sampling plans used for the on-highway heavy-duty engine and nonroad large compression-ignition engine SEA programs.

EPA proposes that engine manufacturers with projected United States annual sales of 7,500 or greater must complete a minimum of two engine tests per day during an SEA. Engine manufacturers with projected United States annual sales of less than 7,500 would be required to complete a minimum of one engine test per day during an SEA. A valid emission test or a voided test would each count as one

test toward meeting the requirement. EPA requests comments on this aspect of the proposal.

A test engine's pass or fail determination would be made by comparing final test results to the applicable federal emission standard. Within five working days of the conclusion of an audit, manufacturers would be required to submit a report to EPA summarizing engine test results, test procedures, and audit events such as the date, time, and location of each test, repairs to engines, and the reason for the repair.

Failure of an SEA could result in suspension or revocation of the certificate of conformity for that family. To have the certificate reinstated subsequent to a suspension, or reissued subsequent to a revocation, the manufacturer would be required to demonstrate, by showing passing data through a re-audit, that improvements, modifications, or replacement had brought the family into compliance. The proposed regulations include hearing provisions which allow the manufacturer to challenge EPA's suspension or revocation decision based on application of the sampling plans or the manner in which tests were conducted.

To maintain uniformity among all nonroad SEA regulations, procedures for marine engine SEA will parallel those in the large nonroad compression-ignition engine rule (59 FR June 17, 1994), with appropriate modifications.

19. In-Use Enforcement and Recall

EPA believes that a critical element in the success of its marine program is ensuring that manufacturers build engines that continue to meet emission standards beyond certification and production stages. Section 213(d) of the CAA specifically subjects nonroad engines to the recall provision of section 207(c).[9] EPA has authority to subject manufacturers to in-use testing (conducted by the Agency or by the manufacturer under section 208 of the Act) and recall for the full useful life of an engine. EPA's authority to recall engines which do not comply with emission standards in-use provides an important incentive to manufacturers to design and build durable engines and vehicles. The in-use enforcement and recall programs for spark-ignition and compression-ignition marine engines are described in the remainder of this section.

The current in-use liability period for on-highway heavy-duty engines holds an engine manufacturer subject to recall testing for approximately 75 percent of an engine's full useful life.[10] Spark-ignition marine engines covered by this proposal have an average useful life period of between 14 and 27 years depending on the engine power. This period is substantially longer than other engines. EPA is proposing an in-use testing and recall program for spark-ignition marine engines under which a manufacturer would test marine engines for the purpose of determining recall liability for a period of 10 years or 350 hours of operation (whichever occurs first), except personal watercraft, which would be 5 years or 350 hours of operation (whichever occurs first). While this period is somewhat longer than the in-use testing period for on-highway heavy-duty engines and large compression-ignition nonroad engines, EPA believes it is reasonable due to the long useful lives and the difficulties involved in finding engines for testing or repair beyond this period. For compression-ignition marine engines, EPA proposes the same recall liability period as for land-based large compression-ignition nonroad engines (see 59 FR 31306). EPA requests comment on this recall testing liability proposals.

Manufacturer in-use testing

EPA is proposing pursuant to section 208 of the CAA an in-use compliance (recall) program based primarily on testing conducted by the manufacturers of spark-ignition and compression-ignition marine engines. Although the program will have many similarities to EPA's current motor vehicle program, it will contain elements designed to minimize the burden on the industry while maintaining a strong incentive to build engines that meet applicable standards when in actual use.

In addition, EPA proposes that in-use compliance with emission standards would be determined based on test results using the same basic test procedure that is used for certification purposes with an opportunity for alternative test schemes to be approved in advance by the Administrator. Manufacturers of spark-ignition marine engines would be subject to recall testing up to 10 years or 350 hours of operation whichever occurs first, except in the case of personal watercraft, which would be subject to testing for 5 years or 350 hours of operation. Manufacturers of compression-ignition marine engines would be subject to the same recall liability period as those in the current nonroad compression-ignition engine rule (59 FR 31306). Actual repair, however, would not be limited by actual years or hours. For example, compliance testing of an engine family might be limited to 10 years, 5 years, or 350 hours of operation; however, any resulting recall repair would be required to be applied to all engines of that family, regardless of the years or hours on an individual engine. This is consistent with EPA's recall repair policy for on-highway vehicles and engines and on large compression-ignition nonroad engines.

Under this proposed testing scheme, EPA will specify the engine families to be tested each year, with selection based on criteria such as production quantity, past emission performance, and engine and emission control technology. Manufacturers will perform testing on the engine families selected by EPA up to a total of 25 percent of a model year's engine families. EPA requests comment on the level of testing burden which would be appropriate to assure in-use compliance giving consideration to the industry's limited resources and the substantial research and development effort it will require to comply with the declining certification standards over the nine year phase-in period (applicable to spark-ignition outboard and personal watercraft engines) of this rule. Additionally EPA requests comment on whether it would be appropriate to phase-in in-use liability through a graduated or tiered level of testing plan for the period of the new standards phase-in.

An example of one proposed in-use engine testing scheme which would be acceptable to EPA for any manufacturer is described in the following paragraphs. This scheme provides that each engine family will be tested periodically and provides for greatly reduced testing if the initial engines tested are clean enough to indicate compliance. The Agency acknowledges that this testing scheme may not be appropriate for all marine manufacturers and requests comment on what segments of the marine industry would find it inappropriate and why.

EPA's current motor vehicle program tests approximately ten vehicles or engines of a specific engine family when determining in-use compliance. To satisfy our goal of establishing a strong enforcement program while minimizing the burden on manufacturers, EPA is proposing a sampling process which is designed to provide adequate data on

[9] Section 207(c) of the Act authorizes EPA to enforce compliance by vehicles and engines to applicable standards in actual use. Manufacturers are subject to recall "[I]f the Administrator determines that a substantial number of any class or category of vehicles or engines, although properly maintained and used, do not conform to the regulations * * * when in actual use.* * *.".

[10] 48 FR 52170, 52173, November 16, 1983.

which to make compliance decisions while allowing the testing of families which are found to emit below the standard to be concluded as expeditiously as possible.

EPA requests comment on alternatives to this testing scheme. NMMA member manufacturers or other engine manufacturers may wish to provide examples of the in-use testing programs they would recommend as alternative testing schemes. EPA would like to have a more detailed description of what NMMA has referred to as an in-use testing program which would provide a "reasonable degree of certainty" as to whether the engine family at issue complies with applicable regulations. The Agency requests a description of what circumstances exist or are anticipated which would create the need for individual test plans. It would be helpful to learn whether a limited menu of plans would possibly meet these needs.

NMMA has suggested that upon approval of a manufacturer's testing plan by the Administrator a manufacturer be allowed to use fleets instead of individually owned engines for in-use compliance testing. The Agency is aware that manufacturers have access to fleets of marine engines as a source for the procurement of in-use engines. These engines will accumulate hours of use before most other engines because they are used for significantly more hours per year than individually owned engines. Thus, testing on these engines could highlight problems long before they would become widespread in engines owned by individual purchasers. Although these fleet engines may not have experienced maintenance and usage patterns identical to private owners, the Agency recognizes value in the accelerated usage patterns that these engines experience. While the Agency is inclined to accept the use of fleets in an in-use testing program conducted by engine manufacturers, EPA wishes to evaluate the relationship between the emissions performance of such fleets and the in-use performance of individually owned and maintained engines. The Agency is interested in an engineering analysis and/or data which indicates that a fleet engine family which indicated passing emissions performance would be representative of an engine family in non-fleet service. In addition, the Agency is interested in any criteria, which if applied to fleets, would better assure that their performance adequately reflected real world performance of marine engines (such as, required storage periods).

In addition to recommending the use of fleets to EPA, NMMA has suggested that manufacturers be permitted to develop, and submit for approval, within 120 days of a request for in-use testing from EPA, individual in-use testing programs for fleet marine engines tailored to the specific circumstances of the particular manufacturer. NMMA's proposal would be subject only to the requirements that the programs be designed to demonstrate with a reasonable degree of certainty whether or not the engines are in compliance. Under this proposal, EPA will approve or disapprove the program within 60 days of submission. A disapproved program must be revised and resubmitted to EPA within 60 days. An approved program must be implemented, and testing must be completed, within eighteen months of approval of the program by EPA. The proposal suggests that the Agency be willing to consider extensions to the requirements when the manufacturer presents circumstances that warrant such extensions. The manufacturer would be required to submit to the Administrator within three months of completion of testing, all emission testing results generated from the in-use testing program.

While the length of time a manufacturer is afforded by NMMA's schedule to complete in-use compliance testing is in the range of acceptability to EPA, the Agency is concerned that because there are 11 different gasoline marine engine manufacturers, NMMA's suggestion would create at least 11 different plans for gasoline manufacturers and more for diesel manufacturers. As with new engine testing, EPA would prefer to implement one or a few testing schemes which accommodate production differences between manufacturers or across engines families where the validity of the scheme(s) is established prior to final promulgation. This would provide greater assurance to the public that this rule will result in new engines that meet standards and provide more consistency and equity between manufacturers. EPA realizes that unique circumstances surrounding a very low production engine or a very specialized engine could necessitate an individual plan. Consequently, if manufacturers comments warrant, it may be appropriate to consider an additional regulatory provision which would accommodate special circumstances on a case-by-case basis.

Under section 207(c) of the CAA, the Administrator requires manufacturers to submit a remedial plan to recall applicable engines if a determination is made that a substantial number of properly maintained and used engines do not conform with the requirements prescribed under section 202 of the Act (an administratively ordered situation). Other statutory requirements include submittal of the manufacturer's remedial plan for EPA approval, procedures for notification of engine owners, submittal of quarterly reports on the progress of the recall campaign, and procedures to be followed in the event that the manufacturer requests a public hearing to contest the Administrator's finding of nonconformity.

Number and types of engines to be tested: Under EPA's currently proposed testing program, a manufacturer would be required to test in-use engines from an engine family specified by EPA when that family reached an appropriate age (in calendar age and/or usage hours). If an engine family did not change from one model year to the next, testing requirements would be reduced. The number of marine engines of a targeted family to be tested by a manufacturer would be determined by the following method:

1. A minimum of four (4) engines per family per year for each family that reaches the minimum age specified, provided that no engine fails any standard. For each failing engine, two more engines would be tested until the total number of engines equals 10.

2. For engine families of less than 500 engines per year or for engine manufacturers of less than 2,000 engines per year, a minimum of two (2) engines per targeted family per year, provided that no engine fails any standard. For each failing engine, two more engines would be tested until the total number of engines equals 10.

3. If an engine family has not changed from one year to the next or, has been certified using carryover emission data or, has been previously tested under options 1 or 2 and, EPA has not ordered or informed the manufacturer of an emission concern with that family, then only one engine per family per year must be tested. If that one engine fails for any pollutant, testing must be conducted as outlined in 1 or 2, whichever is appropriate.

A manufacturer may test more engines than the minimums above or may concede that the engine family fails to comply with applicable standards before reaching engine number 10. EPA will consider failure rates, average emission levels, and the existence of any defects, among other things in determining whether to pursue remedial action. EPA may order a recall before

testing reaches the maximum number of engines.

As discussed above, EPA will consider requests for approval of alternate proposals for assuring in-use engine family compliance. Alternative proposals might be particularly appropriate in cases where (1) annual production is very low; or (2) engines cannot be obtained for testing because they are used substantially in craft which are not conducive to engine removal, such as large vessels where the engine cannot be removed without dismantling either the engine or the vessel; or (3) other compelling circumstances associated with the structure of the industry and uniqueness of marine engine applications.

Collection and testing of in-use engines: While certification testing demonstrates the effectiveness of prototype designs and manufacturer assembly-line testing and SEA demonstrate the performance of newly assembled engines, only an in-use test program can determine the effect that actual engine use has on emission performance. Under the current proposal, an engine manufacturer would, therefore, be required to procure a representative sample of in-use engines which have been operated up to the recall liability period (in calendar time or in hours of usage). EPA would likely target primarily one past model year each year. An engine manufacturer could test more than one model years' engines in a given year, provided the engines had been operated for up to the recall liability period. Manufacturers would be responsible for assuring that they met their testing responsibilities for all families of all model years.

While EPA determines the schedule for testing engine families in its on-highway program, the marine manufacturers will be afforded maximum flexibility in determining the test schedules for their own in-use testing programs so that these programs may be coordinated with other manufacturer activities. However, the Agency will require that the testing of a selected engine family begin within twelve months after receiving testing notification from the Agency and that this testing be completed within a twelve month period. Testing of an engine family in the on-highway program is usually completed within a three month period. The Agency is aware that marine engine manufacturers may have difficulty procuring engines which could lengthen the time needed to complete the testing of an engine family. The Agency believes that providing manufacturers with twelve months to complete this testing provides the manufacturers flexibility in conducting their test programs and adequately addresses most difficulties which would arise. Furthermore, the Agency is willing to consider extensions to this requirement when the manufacturers represent circumstances which warrant such extensions.

Typically a test engine would be procured from sources independent from and unrelated to the engine manufacturer or equipment manufacturer. With prior approval of the Administrator, an engine manufacturer with annual sales of less than 50,000 engines might obtain in-use engines associated with itself or its equipment manufacturer. Furthermore, as discussed above, the Agency is inclined to accept the use of fleets in an in-use testing program conducted by manufacturers.

A test engine would be required to have a maintenance and use history representative of a properly maintained and used engine. To comply with this requirement a manufacturer would question the end user regarding the accumulated usage, maintenance, operating conditions, and storage of the test engine.

The manufacturer would perform minimal set-to-spec maintenance on a test engine. Such maintenance would include no more than what is listed in the owner's instructions for engines with the amount of service and age of the acquired test engine. One valid emission test conducted under the Federal test procedure established for marine engines would be required for each in-use engine.

EPA recognizes the need to develop a testing scheme or limited set of schemes to provide assurance that in-use engines are meeting standards while taking into account the diverse needs of marine engine manufacturers. To this end, EPA requests comments and specific proposals for in-use engine test schemes that will address the concerns described above and on any possible alternative designs of in-use testing programs (such as independent third party testing paid for by manufacturers or their associations) or enforcement that may be more effective. The Agency will work with manufacturers during the comment period to create a limited menu of optional test plans which will meet the needs of the entire industry. However, any alternatives must produce a compliance scheme that provides EPA with an enforceable program which provides substantial incentive to manufacturers to produce clean, durable engines.

In-use test program reporting requirements: Under the current proposal, the manufacturer would be required to submit to the Administrator within three months of completion of testing, all emission testing results generated from the in-use testing program. EPA envisions that manufacturers will simply provide quarterly statements of all emission results obtained during the previous quarter, including a summary table of any engine family that has completed testing during that quarter. At the Administrator's request, a manufacturer would be required to provide documents used in the procurement process, including criteria used in the procurement screening process and information from the end user(s) related to use, maintenance, and storage of the selected engines.

NMMA suggested that when a determination of nonconformity is made (a class is ordered to be recalled) that a manufacturer have the option of an alternative remedial action or a recall. According to NMMA, an alternative remedial action might include re-certification of the nonconforming engine at the higher emission level, and use of the averaging, banking, and trading program elements to demonstrate manufacturer compliance with the emission standards on a corporate average basis. Alternatively, the manufacturer could implement a recall and repair program. A recall program, or an alternate remedial action, must achieve emission reductions sufficient to demonstrate compliance with the national standard on a corporate average basis.

For the reasons described below NMMA's suggestions as we understand them are either inconsistent with the Clean Air Act or with essential tenets of both certification and ABT. The issue of whether the Agency can allow some alternative to recall and repair after a determination of nonconformity has been made was litigated in *Center for Auto Safety* v. *EPA*, 747 F2d 1 (D.C. Cir. 1984), where the court concluded that "* * *section 207(c) requires recall and repair as the only statutory remedy for nonconformity." Therefore, after a determination of nonconformity the Agency may not allow an alternative remedy such as NMMA suggested.

NMMA has suggested that non-conformity determinations made in assembly line or in-use testing not require action by a manufacturer if the manufacturer had or could obtain credits from averaging, banking or trading to cover the nonconformity and still maintain a corporate average below standard.

As was stated in the assembly line testing discussion above, EPA believes

that such an option runs counter to essential tenets of both certification and ABT. For an engine family involved in ABT, the FEL takes the place of the standard for certification, assembly line and in-use testing. For reasons stated earlier, the FELs must remain firm for those engines already introduced into commerce, otherwise, a manufacturer could certify to an overly optimistic FEL, knowing that if the engines drifted over the FEL either in assembly line or in-use testing, it need only cover a credit shortfall and not recall engines.

If a determination of nonconformity with the requirements of section 213 of the Act is made (that is, if EPA orders a recall under the provisions of section 207(c)), the manufacturer would not have the option of an alternate remedial action and an actual recall would be required.

Alternatives to Recall and Repair: EPA also requests comment regarding the circumstances under which alternatives to conventional recall would be considered as a voluntary action. These alternatives would be required to have the same or greater environmental benefit as conventional recall and provide equivalent incentives to manufacturers to produce engines which durably and reliably control emissions. For instance, a manufacturer might establish or increase the size of an in-house engine fleet designed to quickly accumulate usage. This fleet would be tested for emissions and any failures diagnosed would provide the manufacturer with information on needed design or calibration changes. EPA requests comment on how manufacturers who have repeated nonconformities should be handled as compared to those who only occasionally have problems. The Agency invites comment on this alternative as well as others and on the factors the Agency should consider in evaluating proposed alternatives.

EPA is aware that the program described above may not be appropriate for all marine manufacturers or circumstances. More information is needed to evaluate the appropriateness of today's proposal for this industry. EPA believes that today's proposed in-use testing and recall program is one appropriate way to enforce in-use compliance. However, as this is EPA's first regulation of marine engines, EPA requests comment on additional or alternative ways of enforcing in-use compliance or remedying noncompliance. EPA also requests comments on the legal authority for any suggested alternatives.

20. Defect Reporting and Warranty Requirements

While the Agency is not wedded to the number 25, EPA is proposing that manufacturers of marine spark-ignition and compression-ignition engines file a defect information report whenever a manufacturer identifies the existence of a specific emission-related defect in 25 or more engines manufactured in the same model year. However, no report would need to be filed if the defect was corrected prior to the sale of the affected engines to the ultimate purchaser. These proposed reporting requirements are similar to the requirements found in the on-highway program and in the nonroad large compression-ignition engine program. EPA is considering a revision of the on-highway reporting program. Any new regulations may encompass both on-highway and the nonroad sector. The Agency invites comment on the appropriate numerical trigger and an estimation of how many reports a commenter would expect to be generated by such a suggested trigger.

NMMA suggested that having 25 defects of a component of system trigger a reporting requirement would be too onerous. NMMA would prefer to have as a trigger the identification of a specific defect in one percent or more engines of the same engine family manufactured in the same model year, or 25 engine or more of the same engine family manufactured in the same model year. Because the production volume of heavy-duty manufacturers is similar to the marine industry, EPA has examined the level of reporting which currently is shouldered by the onroad heavy-duty manufacturers. As a result of that review, EPA estimates that the marine industry, as a whole, will only be expected to file 5–15 defect reports per year with EPA. A fuller analysis can be found in the ICR supporting this regulation. In addition to currently believing that 25 is not a burdensome trigger, EPA would be concerned that limiting the counting of defects to an engine family or model year could mask wider spread defects which occur in a part or component which is installed in several model years or several engine families in a given model year.

EPA is also proposing a warranty period under authority of section 207(a) of the CAA for spark-ignition marine engine emission-related parts of 4 years. This is the average period that the first owner possesses the engine as indicated by the engine manufacturers. EPA requests comments on the appropriateness of the length of the warranty period and also if the period should restrict the hours of use. EPA is currently developing more detailed regulations that will further clarify manufacturers' responsibilities under section 207(a) for both on-highway and marine engines. EPA will rely on the existing 207(a) practices until those regulations are finalized.

An advisory parts list issued by EPA on July 15, 1991, gives manufacturers notice of EPA's current view concerning the emission-related parts that must be covered by warranty under section 207(a). A copy of this list is in the docket for this rulemaking. This list will also cover marine engines.

21. Tampering Enforcement

As required under sections 213(d) and 203 of the CAA, it will be illegal for any person to tamper with any engine emission-related component or system installed on or in a marine engine in compliance with this proposal. EPA is proposing that existing on-highway tampering provisions apply to marine engines covered by this rule.[11]

EPA is aware that original nonroad equipment manufacturers often supply the engine accessories designed for their specific applications. At the same time, it is required that the engine tested to certify an engine family represent the worst-case configuration of that family. EPA requests comment on how to establish specific criteria or parameters under which a manufacturer would be allowed to continue to modify an engine without (1) jeopardizing the integrity of this proposed emission control program, and (2) causing the equipment manufacturer to have to recertify or risk being in violation of the tampering provisions of EPA's tampering guidance in Memorandum 1–A.[12]

22. Importation of Nonconforming Marine Engines

EPA is proposing to prohibit the importation of nonconforming marine engines originally manufactured after the effective date of this rule, except as provided below. Such prohibition is based in part on the existing regulations for the importation of nonconforming motor vehicles and motor vehicle engines (on-road program) and nonroad large compression-ignition engines.

For the on-road program, Independent Commercial Importers (ICIs) are responsible for all aspects of compliance required of the original manufacturers for their U.S. market production (for example, certification, testing, labeling, warranty, recall, maintaining records).

[11] Office of Enforcement and General Counsel; Mobile Source Enforcement Memorandum No. 1A, June 25, 1974.

[12] Mobile Source Enforcement Memorandum No. 1A.

While EPA provides for an ICI program for motor vehicles and motor vehicle engines, EPA is not proposing to have an ICI program for marine engines. EPA believes that an ICI program for marine engines would not be cost-effective because of the expected low volume of importations of nonconforming marine engines and the high costs associated with an ICI program. Therefore, unless otherwise exempted or excluded, nonconforming marine engines may not be imported into the U.S. In such cases, a marine vessel containing a nonconforming marine engine must have the marine engine replaced with an EPA certified marine engine in order to be imported. EPA requests comment on the absence of an ICI program for marine engines.

This proposal provides for certain exemptions to the prohibition against importing nonconforming marine engines. These include temporary importation exemptions for repairs and alterations, testing and display, and permanent importation exemptions for national security and certain marine engines proven to be identical, in all material respects, to their corresponding EPA certified versions. In previous rulemakings, EPA has provided for a permanent importation exemption for vehicles or engines greater than 20 original production years old. EPA is not proposing an exemption for marine engines greater than 20 original production years old. EPA requests comment on the absence of such an exemption.

Importation regulations are joint regulations between EPA and the United States Department of the Treasury (Customs Service). The citation for United States Customs Service, Department of Treasury regulations governing import requirements is reserved. The citation will be inserted upon promulgation by the United States Customs Service of the applicable regulations.

EPA is also providing for the exclusion of nonconforming engines used solely in competition. EPA will exclude engines used in vessels whose use, because of features that are not easily removed in anything other than competition, would be unsafe, impractical or highly unlikely. EPA will employ a capability test as it has done with motor vehicles since the 1970s. Engines used in vessels that are incapable of uses other than competition will be excluded from the marine engine emission requirements.

V. Discussion of Issues

This section contains further discussion on a number of issues raised during the development of this notice.

A. Choice of Exhaust Constituents to be Regulated

1. Gasoline Spark-ignition Engines

EPA is proposing to regulate total exhaust hydrocarbons (HC), carbon monoxide (CO), and oxides of nitrogen (NO_X) from gasoline spark-ignition marine engines. Standards for particulate matter (PM), carbon dioxide (CO_2), and evaporative hydrocarbons are not being proposed in this rulemaking for gasoline spark-ignition engines for the reasons discussed below.

PM emissions from gasoline engines are small when compared to emissions of HC, CO, and NO_X. When compared to other sources, marine gasoline spark-ignition engines contribute between 0.0 percent and 0.3 percent of the PM inventory in cities studied by EPA.[13] This regulation will reduce HC emissions from these engines and as a result, PM emissions should also decrease. The length of the test procedure would need to be greatly increased in order to collect a large enough sample on a particulate filter for an accurate measurement. At this time, EPA does not consider the benefits of a PM standard for gasoline engines to be sufficient to justify the increased costs of measuring PM emissions from gasoline spark-ignition marine engines. Therefore, EPA believes that separate emission standards for particulate emissions for gasoline spark-ignition marine engines are not appropriate at this time. EPA requests comments on this issue.

The focus of this rulemaking is to reduce ground level ozone. Carbon dioxide is considered a "greenhouse" gas due to its role in global climate change. However, the HC emission standards of this rule are expected to result in significant improvements in fuel economy for marine engines and, therefore, significant reductions in CO_2 emissions. For these reasons, EPA is not proposing to regulate CO_2 from marine sources at this time. EPA requests comment on this issue.

EPA requests comment on the possibility of adopting evaporative emission standards for gasoline spark-ignition marine engines. All on-highway vehicles sold in the U.S. have been designed to control evaporative emissions for many years; however, the characteristics of marine engine operation may prevent the same level of control for these applications. Specifically, the carbon canister-based control systems used in motor vehicles depend on relatively frequent engine operation to restore vapor storage capacity. Marine engines are probably used too infrequently for such a design to be effective.

Sealed fuel systems on the other hand would contain vapors otherwise generated by fuel heating (either from engine operation or from daily temperature swings). Coast Guard regulations discourage, but do not prohibit, pressurized fuel systems (33 CFR 183.524(c)). EPA therefore requests comment on the legality as well as the practicality of designing sealed fuel tanks to control evaporative emissions. A sealed tank would have to be designed with a valve to allow entry of makeup air as fuel volume decreased. The portable nature of gas tanks/cans for outboard engines would perhaps require a more complex connection to the fuel line to allow for repeated opening and closing. If fuel tanks cannot be sealed during engine operation, it may still be possible to design the fuel system in a way that seals the fuel tank during engine-off periods.

Fuel permeation is another issue related to evaporative emissions. Gasoline is known to permeate through plastic and rubber components to the atmosphere at surprisingly high rates. The technologies being developed for on-highway vehicles, primarily coextrusion for fuel tanks and fluorination for fuel lines and grommets, should also be feasible and effective in the marine environment. EPA requests comment on requirements to demonstrate reduced permeation losses from marine fuel systems.

2. Compression-Ignition Engines

EPA proposes that all compression-ignition marine engines be included in the current regulations for new nonroad compression-ignition engines, regardless of power rating or usage (both propulsion and non-propulsion). HC, CO, NO_X, PM, and smoke are proposed to be regulated as in the current regulations. EPA is requesting comment on the appropriateness of removing the lugging mode from the smoke test for marine propulsion engines.

EPA is proposing to regulate all compression-ignition marine engines in this rule. Given the coverage of the large compression-ignition engine rule, this choice raises two issues. (1) Why regulate compression-ignition engines at this time and (2) why regulate even the smallest engines? The questions will be answered sequentially.

[13] Nonroad Engine and Vehicle Emissions Study, November 1991, 21A2001.

EPA is proposing to regulate compression-ignition marine engines today although they were not regulated in the original large compression-ignition engine rule for several reasons. First, in developing inventories for the California Federal Implementation Plans, EPA found that these engines were a very significant source of emissions (1.65 tones NO_X per summer day in Ventura in 1990). Second, the large compression-ignition nonroad engine rule had very favorable cost effectiveness and there was no reason to believe that benefit wouldn't carry over to marine engines. Third, the knowledge gained from working with the Coast Guard on the gasoline spark-ignition engines was appropriately carried over. Finally, the best reading of the Sierra Club lawsuit settlement requires EPA to regulate all marine engines.

EPA chose to propose regulations of even the smaller compression-ignition marine engines because they too seemed to fit under the settlement agreement. Further, these small diesels are generally used in outboards. EPA believes that diesel outboards are substitutable for some gasoline outboards. Thus the market for these engines could grow substantially after regulation. Given the extremely high relative NO_X emission from these engines, EPA believed it was important to control the emissions.

Smoke from marine engines is perceived as a significant local air pollution concern in many areas. These areas have developed local regulations to discourage smoking engines. However, the U.S. Coast Guard has informed EPA that, often, properly maintained compression-ignition marine engines will fail local regulations. The continued smoking is not only unsightly, but it also created clean-up costs and may lead to health problems.

The emissions of primary concern from diesel engines are NO_X and PM/smoke. Only NO_X causes tropospheric ozone formation that is significant from these engines. The standards therefore require a reduction in NO_X. The HC and CO standards are included here to be consistent with the large compression-ignition nonroad engine rule. PM and smoke emissions are regulated for the reasons described above.

B. Water Quality Impacts/Scrubbing

The primary focus of today's notice is on the effects of marine exhaust emissions on ambient air quality. As a result, regulatory efforts and testing programs focus on air effects. However, another aspect of marine exhaust emissions is their impact on water quality. While EPA acknowledges that marine engine emissions also have an impact on water quality, EPA proposes to measure all emissions as if they go into the air, and not to specifically address the impact these emissions have on water quality for this rulemaking. EPA believes this is appropriate for three reasons: (1) The efforts contained in this rulemaking for reducing air quality effects will also act to reduce adverse water quality effects; (2) it is difficult to determine how much of the unburned fuel and oil present in marine environments comes from marine engine sources; (3) prior research regarding the effects of marine exhaust on water quality generally conclude that marine exhaust may not be a significant problem. Each of these are discussed in further detail below.

First, EPA believes that the cross-media effects on water are alleviated by this rulemaking. In fact, controls on exhaust emissions from marine engines designed primarily to reduce their effects on ambient air quality will also benefit water quality. Many of the pollutants associated with marine engine emissions are actually from unburned oil and fuel: current technology 2-stroke engines, the most popular kind for pleasure craft, discharge unburned oil and fuel into the water and the atmosphere along with other exhaust compounds. Today's proposal is expected to eliminate 85% or more of the sales of this old, 2-stroke technology from the marketplace. This will be replaced with technologies which do not emit significant amounts of unburned fuel and oil into the water or the atmosphere. Therefore, the overall emissions levels in both air and water will be significantly reduced as a result of this rulemaking.

Second, many studies conclude that it is difficult, if not impossible, to ascertain how much of the unburned fuel and oil present in marine environments comes specifically from marine engine sources. An undetermined portion of fuel and oil pollutants comes from sources such as parking lots, especially around marinas, and storm water runoff. Thus, while the regulations contemplated in this rulemaking would significantly reduce discharges of unburned fuel and oil from marine engines, the overall effects of these pollutants will not be completely eliminated because of these additional sources.

Third, most research studies of the impact of marine exhaust emissions on water quality indicate that these emissions have only moderate to small impacts on water.[14] According to these studies, as much as 65 percent of the harmful pollutants released into the water from marine engines evaporate into the air, and the remainder are not present in large enough concentrations to be harmful to marine plants and animals. These studies seem to indicate that the gaseous exhaust emissions evaporated into the air are more voluminous than the concentrations of emittants in water. Further study would need to be done to definitively evaluate the contribution of exhaust emissions to water quality problems.

C. Certification Durability Demonstration

One of the main goals of this regulation is to ensure that marine engines meet the emission standards throughout their useful lives while operating in-use. The objective of the certification process is to ensure that the designs of the emission control systems are capable of meeting the emission standards not only when such engines are new, but also during typical in-use operation through the engine's useful life. Given the long useful lives of marine engines, an up front determination of emission control durability is most important since problems may not be detected in-use for long periods of time. EPA considered a number of options regarding the demonstration of durable emission control systems for certification. The following discusses these options in more detail.

1. Self Approval/In-use Testing Feedback Requirement Program

EPA is proposing this option in today's notice. This option consists of a self approval process with in-use testing feedback. Based on good engineering practice, the manufacturer would determine the form and the extent of engine and/or component selection and testing methodologies. The manufacturer would establish deterioration factors which would be applied to the new engine emission levels; the resulting emission levels, taking into account the deterioration factors, would be required to comply with the emission standards (or the family emission limits). The manufacturer would also be required to perform in-use testing for the recall program (see Section IV(D)(19) "In-Use Enforcement and Recall"). EPA would use this in-use data to confirm the methodology for establishing

[14] See Memo to Docket which summarizes several studies on the impact of marine emissions on water quality.

deterioration factors. For example, if in-use testing indicates that an engine family's emission control system is deteriorating at a faster rate than predicted by the manufacturer's deterioration factor (DF), EPA would challenge the use of the manufacturer's methodology for determining DFs for that engine family as well as for other engine families. The manufacturer would have to revise its methodology for determining DFs or provide data and information to support the use of the DF generation methodology for other engine families. Failure of the manufacturer to correctly estimate the deterioration factor in the case of data indicating a faster rate of deterioration, would subject the manufacturer to the recall program penalties.

EPA believes that this approach will best ensure that marine emission control systems will be designed and built to be durable. This program requires manufacturers to assess deterioration of emission control systems before such engines enter into commerce. Therefore, systems with inadequate durability can be identified and corrected before they are used on the waterways. Also, this approach provides a means of determining the adequacy of the deterioration factor methodology through actual in-use data.

2. New Engine Standards/In-use Testing Requirement Program

This option would include emission standards for new engines and a data collection program for establishing a certification durability requirement at a future date. During certification, engine manufacturers would need only to demonstrate that new engines (perhaps after a break-in period) meet the new engine emission standards. However, as a condition of certification, the manufacturers would be required to agree to collect data on in-use engines. This data would be used to establish certification durability requirements at a future date when sufficient information exists on the durability of marine emission control systems.

This program would significantly delay the establishment of a certification durability program. The average useful lives of current technology 2-stroke marine engines are estimated to be between 14 and 27 years. Therefore, a substantial amount of time would pass before sufficient data were collected to establish a certification durability demonstration program. Therefore, EPA is not proposing this option. However, EPA requests comments on this type of program for certification durability demonstration.

3. Specified Service Accumulation Program

Another option considered by EPA is a pre-production durability demonstration program for marine engines similar to that used for on-highway light-duty vehicles. Such a program consists of operating engines to the end of their useful life over a specified accelerated service accumulation cycle to generate deterioration factors. The deterioration factors would then be applied to the new engine emission levels and the resulting emission levels would be required to comply with the emission standards (or the family emission limits). The advantages of this type of program are that the service accumulation and the deterioration factor generation methods would be consistent among manufacturers. Also, EPA has many years of experience in administering such a program.

However, the main disadvantages are related to establishing a service accumulation cycle that is representative of actual in-use operation. EPA currently has insufficient information to develop a representative accelerated cycle for gasoline spark-ignition marine engines. Also, experience with the on-highway certification durability program has shown that such accelerated cycles alone do not do a good job of simulating the in-use conditions and operation that can lead to emission control deterioration. This option does not contain any in-use testing feedback, therefore, any proposed service accumulation cycle would go unchecked with respect to how well it represents conditions that can result in emission control deterioration. Therefore, EPA is not proposing this option in today's notice.

EPA requests comments on whether this type of program is desirable for demonstrating the emission control system durability at the time of certification. Specifically, EPA requests comments on appropriate service accumulation cycles for this type of approach and on how this type of program could meet the goals of ensuring that emission control systems are designed and built to be durable while operating in-use.

4. No Certification Durability Demonstration

One option considered by EPA would be to have no requirements for emission control durability demonstration for certification purposes. This approach would require manufacturers to demonstrate that new engines meet the emission standards but would not require further demonstration during the certification process that the emission control system designs are durable. Instead, this program would rely on in-use enforcement (recall) programs to ensure that manufacturers build durable systems.

The advantages of this option are that it is simple and low cost. Also, it allows manufacturers to establish their own internal programs to ensure that emission control systems are durable and balance the associated risks of recall.

However, the primary disadvantages of this approach relate to the long useful lives of the engines and the potential problems associated with in-use testing of marine engines. The average useful lives of current technology 2-stroke outboard marine engines are estimated to be between 14 and 27 years. Therefore, a substantial amount of time would pass before problems with emission control durability would surface as a result of in-use enforcement testing. During this time, there would be no assurance that emissions control systems were performing properly in-use. Also, in-use engines may be very difficult to track for in-use testing purposes, as previously discussed (see Section IV(D)(19) "In-use Enforcement and Recall"). Since this approach relies heavily on in-use testing as the incentive for manufacturers to build durable emission control systems, the potential problem of limited resources to perform testing on a sufficient number of engine families could undermine the objective of this approach.

Due to the disadvantages discussed here, EPA is not proposing this approach in today's notice. However, EPA requests comment on the general approach of no durability demonstration requirements during the certification process. More specifically, EPA solicits comments on whether such an approach could be as effective as other options and on how the potential difficulties associated with this approach could be overcome.

EPA requests comment on the appropriateness of the proposed option as well as the other options discussed or other options for certification durability demonstration.

D. Use of an HC Emission Standards Curve for Outboard and Personal Watercraft Engines

EPA is proposing HC emission standards curves for spark-ignition outboards and personal watercraft specific to the power output of an engine as explained in Section IV(D)(2).

EPA believes that a standards curve is necessary because of the wide range of engine sizes subject to this proposal. Current engine size availability ranges from 1.5 kW to over 250 kW for outboard engines. Historically, with this wide spread of engine sizes, EPA has considered different standard levels for different size ranges of engines. This has partly been due to separate regulatory efforts for engines of different size and partly due to different uses for different size engines. For example, gasoline on-highway engines are classified as light-duty or heavy-duty with separate emission standards for each. If EPA were to regulate outboard marine engines in this historical manner, the result would be a set of step function emission standards which would group engines by power rating and apply separate standards to each group. EPA requests comments on this traditional approach to emission regulation as it might apply to HC emissions from gasoline spark-ignition engines. Commenters should include recommendations for specific engine groupings, criteria for engine classification and standards levels for each group.

As an alternative, EPA believes that the curve concept is much better suited for this regulation for several reasons. The curve eliminates the "steps" between emission standards and the associated problems of determining appropriate engine ranges for each step. Manufacturers could "game" step function standards by derating the power of engines so that they are classified into a group with higher emission standards. Another downside of step function standards is that for smaller (lower power) engines in a given step you are limiting the credit generation potential, while for larger (higher power) engines in the same range you are increasing the credit generation potential, compared to the inherent relationship between the work specific HC emission rate (g/kw-hr) and power. For large engines, the emission rate difference is marginal. But for the small engines, particularly below 100 kW, the slope of the curve changes at an increasing rate and results in significant emission rate differences for small power changes. The use of a curve allows the optimization of the work specific emission rate-power relationship.

Alternatively, having one HC standard for the entire power range of gasoline marine engines is not appropriate for the range of engine sizes proposed to be regulated. HC emissions on a work specific basis (g/kw-hr) inherently increase with smaller engines due to higher surface to volume ratios. The proposed standards curve concept takes into account these inherent differences in HC emissions for different size engines and requires equal percentage reductions of HC emissions from both large and small engines on a g/kw-hr basis. Therefore, the goal of reducing the emission rates for all engines is not compromised by the standards curve structure. In addition, this approach avoids setting rather arbitrary cutpoints for step change standards, thus eliminating the potential for mis-classifying engines by artificially changing their power ratings so that less stringent standards apply. EPA requests comments on the proposed standards curve for controlling HC emissions for outboard and personal watercraft engines. EPA also requests comments on other possible forms of the standards such as one level for all such engines.

E. Options for Averaging Sets and Effect on HC Standards for Gasoline Spark-ignition Marine Engines

Based on the estimated potential emission reductions that are expected from feasible future technology, EPA is proposing to set emissions standards that will achieve a 75 percent reduction in HC emissions of 2-stroke outboard/personal watercraft engines. As discussed in Section IV(D)(2), the specific standards for each outboard and personal watercraft engine family are determined by the power output of the engine and must be met on a corporate average basis. For the purpose of determining compliance with the average HC standards, EPA proposes to construct two separate averaging sets; Set 1: Including outboard/personal watercraft engines and Set 2: including inboards/sterndrive engines. EPA proposes to allow trading only within an averaging set, with no trading permitted between averaging sets. By constructing two averaging sets, EPA intends to generate two separate standards curves based on the emissions of the engines within each set. It is from these standards curves that emission credits and debits would be calculated for each engine family and corporate average compliance would be determined for each manufacturer. The mathematical formula for calculating the standards curve for Set 1 is discussed in section IV(D)(2) and reflects only the emissions of outboard/personal watercraft engines and the reductions that can be achieved from those engines through the application of expected feasible technology. Due to the narrower range in power output in the engines included in Set 2 and their more uniform emissions characteristics, the curve representing their emissions standard is flat. Therefore, EPA believes that a straight line standard is appropriate for determining compliance on average for these engines. EPA requests comments on the appropriateness of a straight line standard for Set 2.

EPA considered several options in constructing averaging sets and standards curves, including combining all gasoline spark-ignition engines into a single averaging set and generating one standards curve based on the baseline emissions of all such engines. EPA decided against proposing the single set option for the following reasons.

First, Section 213 of the Clean Air Act, directs EPA to set emissions standards for new nonroad engines that will achieve the greatest degree of emissions reduction achievable through the application of technology which the Agency believes will be available, taking several factors into account, including the cost of applying available technology. The emissions levels in the compliance curve generated in the single set option in the final year of phase-in are approximately 10–15 percent below the levels in the final standards curve describing the emissions of outboard/personal watercraft engines. To comply with the emissions levels in the single standards curve, outboard/personal watercraft engine manufacturers would have to achieve approximately a 90 percent reduction from current levels or purchase credits from other manufacturers of inboard/sterndrive engines. EPA believes that feasible technologies for outboard/personal watercraft engines will not achieve such levels without excessive NO_x increases. Further, EPA acknowledges that for some applications, especially for engines between 10–50 kw, only outboard technology is appropriate.

While the single set option results in a standards curve which is more stringent on its face, EPA believes that the real emissions reductions achieved will be the same under either the single set or two set options. If the single curve is promulgated, the outboard/personal watercraft engine manufacturers could most cost effectively achieve about a 75 percent reduction through application of the feasible technology and would be forced to buy credits to make up the difference. This would have the effect of making trading mandatory for some companies, creating the possibility for companies that generate credits to exploit this need. EPA is very concerned that the marine engine market is already oligopolistic and that the single curve

option carries significant risk of further limiting the competition in the market.

The effects of the single curve option in forcing the purchase of credits by manufacturers of outboard/personal watercraft engines are especially pronounced in the first years of the program. Using the single set option, the baseline standards curve in year one would be approximately 50 percent below the baseline compliance curve for outboards/personal watercraft under the two set option. Thus to comply with the baseline curve, manufacturers of outboard/personal watercraft would be forced to either (1) buy credits immediately , or (2) reduce emissions by 50 percent in year one. EPA does not believe reducing emissions by 50 percent in year one through application of new technology is feasible. Nor is it appropriate to in effect require outboard and personal watercraft manufacturers to purchase a large number of credits from inboard/sterndrive manufacturers in year one. The resulting market ramifications could be unacceptable.

Because of this problem, EPA did consider a third option of maintaining separate averaging sets during the nine year phase-in and then combining all engines into a single set in year ten. However, analysis showed that after the proposed phase-in, outboard manufacturers would not be able to comply with a final year standards curve generated under the single set option through re-engineering of their products alone, and would still be forced to purchase credits. The concerns about competitiveness in the market remain under this third option, although to a lesser degree. Additionally, EPA believes that § 213 requires the Agency to set standards that can be met either through existing or foreseeable technology. Therefore, EPA believes that two averaging sets with separate standards curves for each set is the most appropriate option for regulating HC emissions from gasoline spark-ignition marine engines.

However, the single set option does have several advantages. It provides the greatest opportunity for trading and more accurately assigns relative values to emissions from various technologies in the market. This relative valuation maximizes the incentive to substitute potentially cleaner inboard/sterndrives where substitution is appropriate. Combining all gasoline spark-ignition marine engines into one set simplifies compliance and enforcement and minimizes the chance of confusion over engine classification as new engine types (i.e. "jet drive" engines) emerge.

EPA is interested in encouraging the substitution of inboard/sterndrive technology for outboard technology since the former is expected to emit lower hydrocarbon emissions than future technology outboards. If inboard/sterndrive engines are cleaner than future technology outboards, EPA would like to encourage marine engine manufacturers to sell inboard/sterndrive engines in place of outboard engines where such substitution is possible. However, EPA recognizes that such substitution may not be possible for some applications. EPA believes that the proposed two set option will also encourage such substitution, since outboard engines will reflect the cost of emission control strategies. The price of inboard/sterndrive engines should remain relatively constant in comparison, because these engines are expected to meet the standard without additional controls or with minor calibration adjustments. However, if a single set standards curve were adopted, inboard/sterndrive engines would potentially generate larger emission credits and become even less expensive relative to outboards, thus encouraging substitution with inboard/sterndrive engines to a greater degree than does the two set option.

EPA understands that the proposed two set option may limit the emission trading pool, creating a smaller market than would occur with a broader, single averaging set. Credits could cost more and be traded less frequently than in a larger, more efficient market. In the long run, emission reductions could potentially be more expensive under the two set option than with the single averaging set. EPA understands that this argument is largely theoretical and requests comment on how markets would actually function under both averaging set options.

EPA believes that the potential advantages of a single averaging set may not offset the problems inherent in requiring engines to meet a standard that cannot be met through feasible future technology as outlined in Section 213 of the Act. Further, EPA believes that constructing two averaging sets meets the Agency's emission reduction goals and still encourages substitution of the cleanest technologies. For these reasons and others discussed at the beginning of this section, EPA today proposes to construct two averaging sets with separate HC compliance curves for each set. However, EPA requests comment on the option of combining all gasoline spark-ignition marine engines into a single averaging set with one standard curve. Particularly, EPA is interested in comments regarding how the price to the consumer differs between the proposed option and the single set curve option. EPA also is interested in comments related to implementation of such a single curve from the onset of the proposed program as opposed to implementation of a single curve in the years after phase-in is complete. To facilitate comments, section IV(D)(6) contains a full discussion of how the proposed averaging sets and standards curves would be implemented.

F. Electric Outboard Engines

EPA has not included electric motors in the baseline even though they are clearly substitutable and have the potential for further development as a marine power source. However, EPA lacks an appropriate emission factor to assign them. An emission factor is needed before including them in the baseline because electricity from a power plant must be used to recharge the battery. The appropriate emission factor is debatable. EPA requests comments on including electric motors in the baseline and on an appropriate emission factor for electric motors.

G. Level of HC Standard for Spark-ignition Outboards and Personal Watercraft Engines

EPA is proposing an HC average emission standard, which when completely phased-in (model year 2006), will result in an overall 75 percent reduction in HC emissions from spark-ignition outboard and personal watercraft engines from baseline levels. The HC emission reduction will come from the use of cleaner technologies, such as 2-stroke direct injection, 4-stroke, catalyst or other technologies, for outboard and personal watercraft engines.

The following issues are related to the level of the HC standard:

1. The marginal cost-effectiveness of emission control
2. Consideration of price elasticity effects
3. Spreading capital control costs over time
4. The level of the NO_X standard
5. Adherence to statutory criteria

EPA's proposal balances these concerns. Comments are requested on the proposed regulatory package, including comments on any individual element. If comments prompt EPA to change any individual element in the Final Rulemaking, changes in other elements may be necessary as outlined in the following sections.

1. Marginal Cost-Effectiveness Curve

EPA used the marginal cost-effectiveness curve in Figure 2 as an analytical tool for choosing the target

reduction from outboards and personal watercraft. EPA is proposing a 75 percent reduction in HC emissions from outboards and personal watercraft. EPA believes that the marginal cost-effectiveness of emission control begins to decrease dramatically after a 75–80 percent reduction. EPA believes that there is a confidence range around the marginal cost-effectiveness curve, because of the possibility that either the costs or the effectiveness of various technologies in reducing emissions is over or underestimated. If costs (and therefore engine prices) are higher than predicted, there could be a negative impact on turnover to clean engines. Consumers may choose to hold on to old higher emitting engines, and therefore expected benefits would not be achieved. The data on which the benefits have been estimated is new engine data. EPA and the manufacturers have little data on in-use deterioration in these engines and no data on in-use deterioration from engines equipped with certain future technologies (such as direct injection). EPA proposes that the emission levels required under the standards curve to be maintained in-use. Although EPA does not have hard data for in-use emissions for all technologies, EPA expects that some deterioration may occur. Therefore, setting the standards curve at a 75 percent reduction to account for in-use emissions seems reasonable. Requiring an 80 percent reduction carries the risk that engines could not comply in-use. EPA requests in-use testing data on all emission reduction technologies. EPA believes that an HC reduction level of 75 percent for outboards and personal watercraft allows for these uncertainties in predicted marginal costs and effectiveness.

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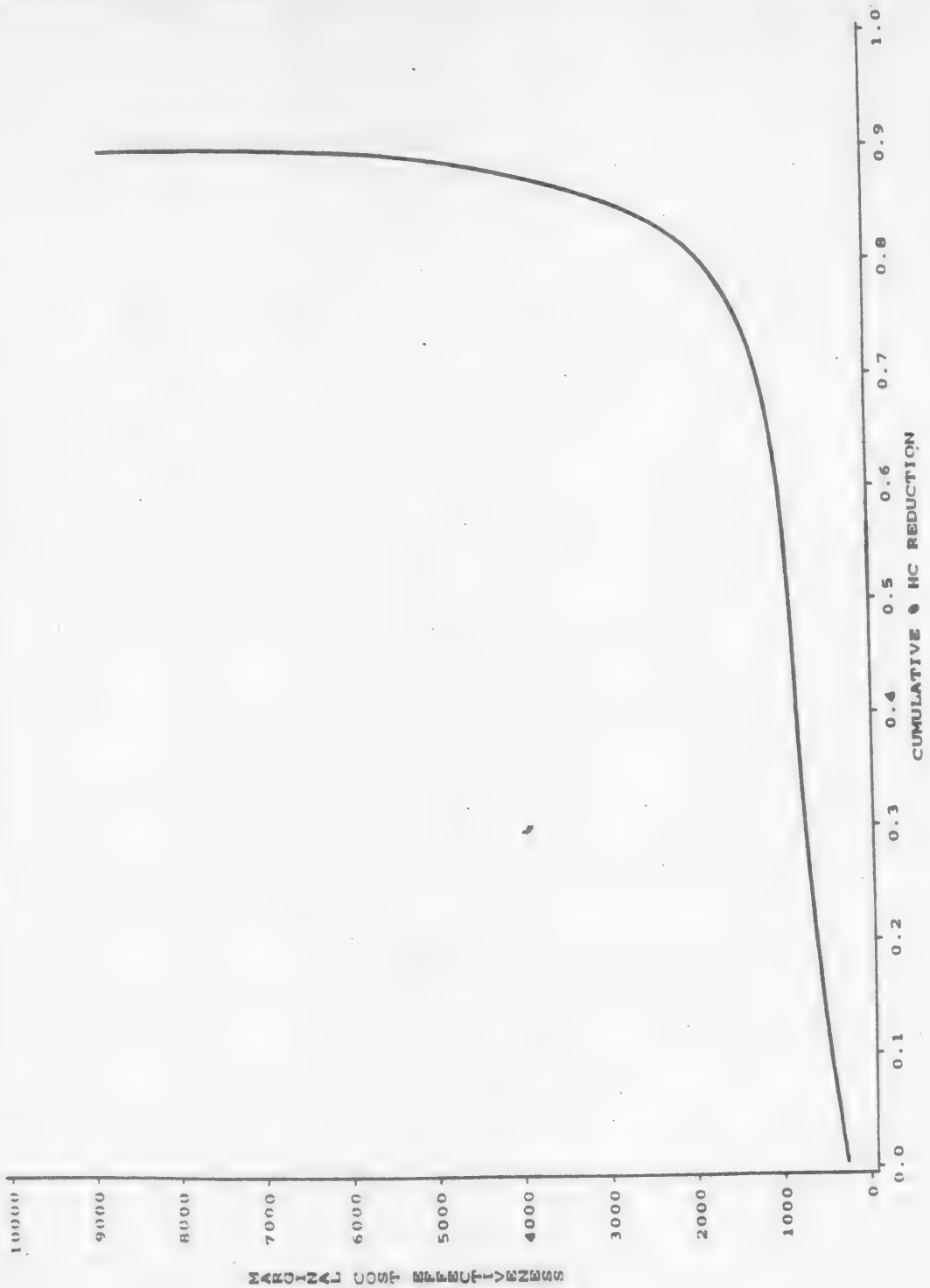
FIGURE 2

MARGINAL COST EFFECTIVENESS CURVE



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However, EPA believes that estimated benefits of control technology could be understated by the manufacturers. EPA's analysis of emission levels submitted by manufacturers found that for the different control technologies, a range of emission results were reported. While it is expected that costs should differ between manufacturer due to the industry structure, one would expect less variation in the emission results for the same control technology. There may be a learning curve for manufacturers in the calibration of control technology which explains the variation in controlled emission levels which EPA saw in the manufacturers data. A reduction of this variation, however, is only estimated to at best make 85 percent an appropriate HC reduction level based on the marginal cost-effectiveness curve.

EPA is requesting comment on requiring a reduction of 80–85 percent for outboards and personal watercraft. Looking simply at the curve as shown in Figure 2, in EPA's judgement an 80 percent reduction reflects the level at which additional reductions are shown to become relatively expensive per unit of emission reduction achieved. Since the data was supplied by engine manufacturers, who do not have an interest in understating costs, EPA believes actual costs are close to these levels, if not lower. This data shows that the cost of additional control increases relatively quickly at the 80 percent point. However, the expected cost of control at 80 percent reduction is relatively moderate ($2,000/ton of HC reduced) compared to other programs EPA has implemented for HC control.

Reductions beyond 80 percent from outboards/personal watercraft are possible, as are reductions from sterndrive/inboard engines. These reductions tend to be quite expensive as they involve engines which, due to their size, sales, or use are expensive to control. EPA requests comments on reductions at, and beyond the 75–80 percent level from outboard/personal watercraft.

2. Elasticity Effects

Price elasticity is the economic term for the degree to which changes in product prices influence sales. Based on the best information available, EPA expects that a given percentage price increase due to production cost increases will have at least as large a corresponding percentage impact on sales. Such a response is customary with discretionary products and most marine engines are discretionary purchases.

Two effects of the price increase expected due to this regulation should be recognized. First, as mentioned above, the price increase can be expected to lead to a decline in sales of new engines. Second, the decline in sales means either that people find new forms of recreation or buy used marine engines. EPA is not in a position to determine the extent to which people will substitute other forms of recreation, such as sailing, or will buy a greater number of used marine engines: Substitution of some forms of recreation, such as sailing, will likely benefit the environment. However, if the increased price of new marine engines results in increased demand for used marine engines, the environment may be harmed in the short run because people will not be buying the newer, cleaner engines to replace old engines. The useful life of unregulated engines may be extended.

EPA is concerned about the effect of a price increase on new engine sales. If people continue to boat, it would be better for the environment if people buy and use new, clean, controlled engines rather than old, dirty, uncontrolled engines. Therefore, when setting the HC emission standard level, EPA has decided to err on the conservative side of the confidence range about the marginal cost-effectiveness curve and propose a level of 75 percent HC emission reduction for outboard and personal watercraft engines. The price effect for outboard/personal watercraft will be less than if EPA chose 80 percent or 85 percent HC emission reduction, as discussed previously regarding marginal cost-effectiveness.

EPA requests comment as to whether price elasticity concerns should be used as a criterion for setting emission standards. Additionally, comment is requested on what the appropriate HC emission reduction target should be for outboards and personal watercraft if price elasticity is not a concern.

Finally, EPA requests comments on programs which may be constructed to encourage turnover of the in-use fleet of marine engines. EPA believes that scrappage programs may be a way of influencing the attrition of old marine engines and the demand for new marine engines. It is conceivable that such a program could be constructed in conjunction with a national standard if issues surrounding surplus and quantification of emissions could be addressed. Interested readers should see EPA's MERC guidance for more information on this topic (Feb 23, 1993; 58 FR 11134).

3. Leadtime and Phase-In Considerations

EPA is proposing a phase-in of the required emission reductions for outboard and personal watercraft engines over a period of 9 model years beginning with model year 1998. EPA recognizes that this is a long phase-in period with a short leadtime period. However, it is justified by the standards structure, the large reduction in HC proposed, the expected costs of this to be imposed by regulation, and the related revolutionary changes to engines and production lines.

The technologies needed to achieve the proposed HC emission reductions are revolutionary technologies for this industry. Sufficient time is necessary to allow industry to design engine models and alter production lines. Consumer acceptance of the new types of outboards and personal watercraft will be critical to future viability of the industry. This is because the engine technologies will be different and unfamiliar. The proposal takes the market in one step from 2-stroke technology, which has not changed since the 1950's, to technologies associated with 4-stroke hydrocarbon levels, which include 4-stroke, direct injection 2-stroke, or catalyst technologies. Further, for some types of engines, particularly larger outboard motors, technical difficulties exist in applying emission reduction technology which necessitate a longer phase-in (such as, development of direct injection 2-stroke technology for large outboards).

Compounding these concerns is the fact that industry is coming out of a recessionary period in 1991 and 1992 which drained resources. Companies are in the process of rebuilding financial resources after these setbacks. The economic recovery should allow companies to regain resources, although perhaps lagging behind the economy as a whole. In the future, with ample phase-in, companies should be in a good position to handle the product development and production line costs which will be incurred due to this regulation. EPA believes that spreading the cost increases due to the proposed regulations over a longer period is important for those reasons and because industry estimates indicate that consumers are price sensitive. Estimates indicate that shortening the phase-in period to 7 years would increase annual costs by over 30 percent for the proposed level of reductions. Given that the emission reductions will result from new engine sales and not from the entire fleet, EPA believes that the small

amount of reduction foregone by the long phase-in is worth the expected reduction in cost and price allowed by spreading the costs over a longer period. Allowing time for the market to adjust to a changing cost structure will help to maintain the economic vitality of the market and potentially mitigate large adjustments to sales volumes. Therefore, it is essential that ample time be given for industry and consumer adjustment to the new cost structure imposed by regulation.

Moreover, nonattainment areas need to achieve emission reductions from gasoline marine engines as a long term attainment maintenance strategy. EPA is proposing a long term strategy that will achieve as much HC emission reduction as is relatively cost-effective from this source as explained above in the discussion of marginal cost-effectiveness. EPA is proposing a reduction level which pushes the limits of the marginal cost-effectiveness curve. It is EPA's opinion that the proposed emission reductions reflect the most aggressive emission reduction strategy feasible as an attainment maintenance strategy. Therefore, EPA is proposing a maintenance strategy, allowing a 9 model year phase-in period.

In addition, incentives are proposed to facilitate early emission reductions beyond the requirements. Manufacturers have an incentive to achieve emission reductions in excess of the requirements, especially in the early years of the phase-in, because the average standard level is not as low in the early years of the phase-in as it is in the later years. Manufacturers have the opportunity of banking unused emission credits, thereby attaining reductions in excess of program targets. This issue is discussed further in issue section M. "Banking of Emission Credits".

Additionally, the proposed phase-in regulatory structure has the advantage of requiring specific emission reduction progress each year of the phase-in. The regulatory structure requires that the new engine fleet for each model year of the phase-in reduce emissions by a set percentage from the baseline new engine fleet level.

Last, leadtime has been reduced by the standards structure. Implementation begins only 2 years after scheduled final rule promulgation. This 2 year leadtime is significantly less than leadtime given in the past for on-highway motor vehicle regulations. The implementation date is sooner than it would have to be for a program in which all engines would meet a certain level, because EPA believes that averaging and trading affords early reductions for those engines which are most cost-effective to control.

In light of these points, EPA believes that the 2 year leadtime and 9 year phase-in period are appropriate and feasible for the proposed emission reduction requirements. Because EPA is taking comment on the level of the HC emission standard, it should be noted that deviations from the proposed level would impact the length of the phase-in period. For example, if EPA were to finalize a less stringent HC emission standard level in response to comment, then less costs would be imposed on industry and consumers, and regulatory costs could be spread over fewer model years. If EPA finalizes a more stringent HC emission standard level than that proposed, the additional costs imposed may require a longer phase-in period. However, EPA's opinion is that it is unlikely that the 2 year leadtime would need to be changed as the result of either a less or more stringent HC emission standard.

4. Level of NO_X Standard

EPA is proposing to set average NO_X emission standards for outboard and personal watercraft engines at 6.0 g/kW-hr and for sterndrive and inboard engines at 6.5 g/kW-hr. The level of the HC standards impacts the level of the NO_X standards. The types of technologies used to reduce hydrocarbons from current technology 2-stroke engines will likely result in increased NO_X levels. EPA believes that the proposed standards reflect the proper balance between HC and NO_X standards: They achieve significant reductions in HC emissions while minimizing the increase in NO_X emissions. Therefore, in considering different levels of HC standards from those proposed in today's notice, commenters must also consider the impact on NO_X standards and inventory levels. EPA requests comments on NO_X standards below, above, or at the proposed levels of 6.0 g/kW-hr for spark-ignition outboard/personal watercraft engines and 6.5 g/kW-hr for sterndrive/inboard spark-ignition engines. The HC/NO_X tradeoff issues is an important issue which is discussed in much greater detail in several other sections of this preamble.

5. Proposed Standards Fit Statutory Criteria

EPA believes that the proposed standards structure is consistent with the statutory requirements of Clean Air Act (CAA) section 213. The Act requires EPA to consider costs, leadtime, and other factors in making its determination of the "greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available." Though the language of CAA section 213 is silent on the issue of averaging and trading, it allows EPA considerable discretion in determining what regulations are most appropriate for implementing CAA section 213. The statute does not require a specific standard or technology to be implemented. Further, the emission standards under CAA section 213(a)(3) are "applicable to emissions from * * * classes or categories" of new nonroad engines or vehicles. This indicates that EPA's regulations may apply to nonroad engine classes in the aggregate, and need not apply to each nonroad engine individually.

At the same time, EPA believes that any averaging and trading program must be consistent with the statutory requirement that the standards reflect the greatest degree of emission reduction achievable through the application of available technology. EPA believes that the proposed standards are fully consistent with this requirement. The proposed emission standards have been established in light of averaging and trading program elements. EPA is proposing average emission standard levels that are set lower than they would be if all engines had to meet these standards because averaging and trading allow EPA to set a higher target level of reduction, yet still at a reasonable cost. In essence, the cost advantages of averaging and trading would be used to achieve a larger emission reduction.

The averaging and trading program elements are inherent in the proposed standards structure and were not designed to simply increase regulatory flexibility to manufacturers and/or lower costs. EPA does not consider these program elements to be optional. While averaging and trading do increase flexibility and lower cost compared to command-and-control, the command-and-control option is infeasible at the proposed standard levels due to the high costs of trying to achieve the proposed levels with every engine.

The proposed standards structure contains emission standard levels determined by applying the concept of cost-effectiveness. This is explained previously in section IV(D)(2).

EPA believes that the proposed standards level is consistent with the statutory requirements of CAA section 213. A discussion of the technologies and levels considered by EPA can be found in section V(I).

H. NO_X Emission Standards for Gasoline Spark-Ignition Engines and NO_X/HC Tradeoff

The main focus of this regulation is to reduce the extremely high HC emission rates of current technology 2-stroke marine engines. However, EPA is striving to minimize any increase in NO_X emissions which could occur as a result of the stringent HC standards. Information gathered during the development of this proposal suggests that for outboard engines, HC emission rates of 4-stroke outboards are roughly 10–14 times lower than current technology 2-stroke outboards. However, NO_X emission rates are roughly 2–4 times higher for 4-strokes than for 2-strokes. Direct injection 2-stroke technology is also expected to substantially reduce HC emissions while increasing NO_X emissions beyond the levels emitted by the 2-stroke technology levels.

The high HC and low NO_X levels of current technology 2-stroke engines are inherent in the operation of such engines. For such engines the air/fuel intake mixture is used to push the exhaust gas out of the cylinder, resulting in a substantial dilution of the exhaust gases with unburned intake fuel. This "scavenging" of exhaust gases by fresh air/fuel charge results in a substantial portion of unburned fuel being pushed out with the exhaust gases. As a result, HC emissions are extremely high. However, NO_X emissions are low due to the lower combustion temperature resulting from exhaust being mixed in with the air/fuel intake mixture and from low oxygen levels due to rich air/fuel mixtures. Any modifications that raise combustion temperatures would be expected to increase NO_X levels.

Most of the technologies being considered to reduce HC from spark-ignition marine engines will result in NO_X increases. For example, with 4-stroke technology, exhaust gases are pushed out of the cylinder by the piston during the exhaust stroke. Therefore, compared to the pre-combustion air/fuel mixture of a current technology 2-stroke engine, the mixture of a 4-stroke engine contains much less exhaust gas. This in turn results in higher combustion temperatures, and therefore higher NO_X emissions from 4-stroke engines.

EPA believes that the increased NO_X emissions from technologies that will replace current technology 2-stroke engines can be somewhat offset by reductions in NO_X emissions from 4-stroke spark-ignition sterndrive and inboard engines. These NO_X reductions are available from at least three mechanisms: Exhaust gas recirculation (EGR), catalysts, and recalibration. In developing the standard to propose for these engines, EPA only considered recalibration and EGR because these changes can be performed by the manufacturer at reasonably low cost. Three way catalysts are more expensive equipment and their performance has not been demonstrated in the marine environment. EPA wants to ensure that inboard/sterndrive engines (which are relatively low emitting engines) will be attractive substitutes for outboards and personal watercraft in those applications where substitution is a viable option, and is therefore concerned that the regulations proposed today should not significantly increase the cost of inboard/sterndrive engines.

EPA performed emission testing on 3 inboard marine engines which had a range of calibrations resulting in various levels of HC and NO_X emissions. The HC vs. NO_X emissions were plotted and a calibration was extrapolated which could potentially reduce NO_X emissions with a slight penalty for HC emissions. As a result, EPA is proposing an average NO_X standard of 6.5 g/kW-hr for spark-ignition sterndrive and inboard engines, which represents about a 10 percent reduction in NO_X emissions from today's sterndrive and inboard engines. This results in an increase in overall NO_X emissions from all gasoline spark-ignition marine engines of 32 percent. If EPA did not require this 10 percent reduction in NO_X emissions from 1990 sterndrive/inboard engine NO_X emissions levels (which average at 7.0 g/kW-hr), the overall increase in NO_X from all gasoline spark-ignition marine engines would be 38 percent. While the additional 6 percent reduction (32 percent versus 38 percent) may not appear to be significant, manufacturers claim that 1994 engines have significantly higher NO_X than did 1990 engines due to recalibration to meet customer desires. Therefore, EPA may be mitigating larger NO_X increases not reflected by the 1990 sales fleet of sterndrive/inboard engines by requiring the 6.5 g/kW-hr average NO_X emission standard.

Although not proposed in today's notice, EPA has also considered setting NO_X levels below 6.5 g/kW-hr. EPA has estimated that to totally offset the increase in NO_X from spark-ignition outboards and personal watercraft, a level of 3.9 g/kW-hr would be required for spark-ignition sterndrive and inboard engines. EPA rejected the 3.9 g/kW-hr standard because EPA believes that there are substantial technological problems with achieving this level from these engines. For example, if this level were to be achieved by recalibration and or timing adjustment, HC and CO emissions would increase substantially for these engines. EPA believes that to meet such a standard and keep HC and CO low, all sterndrive and inboard engines would have to utilize closed loop fuel systems with three-way catalytic converters. The costs for such controls would not justify the relatively small benefit from these marine engines, which are already relatively clean.

EPA has more seriously considered levels between 3.9 g/kW-hr and the proposed level of 6.5 g/kW-hr. A level of 6.0 g/kW-hr has been considered for inboards and sterndrives. This would result in an overall increase in NO_X emissions from all gasoline spark-ignition engines of 25 percent as compared to 32 percent for the proposed 6.5 g/kW-hr standard. EPA currently does not have sufficient information regarding the effects of calibrations and EGR to attain such standards on the drivability and durability of gasoline spark-ignition sterndrive and inboard marine engines. EPA requests information on such effects at the level of 6.0 g/kW-hr. It must be noted that any increase in NO_X emissions from spark-ignition marine engines will be more than offset by the reduction in NO_X expected from the proposed NO_X standards for diesel compression-ignition marine engines.

EPA requests comments on the feasibility of the proposed NO_X emission standards for spark-ignition sterndrive/inboard engines and outboards and personal watercraft engines. EPA requests comments regarding the trade-off between HC reductions and NO_X increases for marine engines. EPA also requests comments on whether or not the proposed NO_X standards are appropriate, or if they should be higher or lower in light of the HC/NO_X trade-off. Specifically, EPA requests comments on the proposed level and structure of the emission standards as a way of meeting the goal of significant HC reductions while minimizing NO_X increases.

While the NO_X standards are different for outboard/personal watercraft and sterndrive/inboard categories, EPA is proposing to allow emissions averaging to achieve standards for the following reasons. First, an average standard may be set that results in greater economic efficiency than a cap type of standard which all engines must meet. Second, an average NO_X standard provides incentives for the manufacturer to achieve levels lower than the standard using new technologies. These new technologies might be useful not only for reducing the emissions from the

engine on which they are used but also for setting more stringent standards in the future in other rules.

I. Effect of Available Technologies on Emissions and Performance From Gasoline Spark-Ignition Engines

Chapter 1 of the draft Regulatory Support Document describes the technologies EPA has determined will be capable of meeting the proposed standards. This section will discuss the emission reductions EPA believes can be expected from these technologies, and the impact of these technologies on performance. The discussion is organized by equipment types because the equipment type has a large impact on which control technologies are available.

When considering an appropriate standard level for marine engines, CAA Section 213 requires EPA "In determining what degree of reduction will be available, the Administrator shall first consider standards equivalent in stringency to standards for comparable motor vehicles or engines (if any) regulated under section 202, taking into account the technological feasibility, costs, safety, noise and energy factors associated with achieving, as appropriate, standards of such stringency and lead time." This section will discuss the automotive technologies considered, primarily four-stroke engines and catalytic converters, and why EPA is not purposing standards of equivalent numerical value to standards applied to motor vehicles. The use of catalytic converters on current two-stroke crankcase charge scavenged outboard and personnel watercraft engines is discussed, along with the technological difficulties associated with the application of catalytic converters to such engines. In addition, EPA considered the application of catalytic converters to four-stroke outboard and personnel watercraft engines as well as sterndrive and inboard engines. The technological difficulties of applying catalytic converters to marine engines, while not insurmountable, would be costly. When considering the level of the standard on a marginal cost effectiveness basis, the application of catalytic converters to four-stroke marine engines was found to be relatively expensive for the emission benefit derived from the technology.

1. Spark-ignition Outboard and Personal Watercraft Engines

Several technologies were considered for reduction of HC emissions from current two-stroke outboard and personal watercraft engines: conversion to four-stroke, direct-injection two-stroke, recalibration of current two-strokes, and the use of catalytic converters. In determining the benefits from these technologies, EPA compared emissions rates (on a brake specific work basis) from current two-stroke outboard and personal watercraft engines without these emission control technologies to estimates and test data from engines with these emission control technologies. Most of this data was received from the marine engine manufacturers. EPA has also made independent estimates as well and both are summarized in Table 2.

TABLE 2.—EPA AND MARINE ENGINE MANUFACTURER RANGE OF ESTIMATES OF POTENTIAL HYDROCARBON EMISSION REDUCTION, PER ENGINE, FOR CURRENT TWO-STROKE OUTBOARDS AND PERSONAL WATERCRAFT

Technology	HC percent reduction estimate ranges, per engine mass specific emission rate (%)
Conversion to Four-Stroke	75–95
Two-stroke direct injection	75–90
Recalibration of current two-strokes	8–20
Catalytic converters on current two-strokes	65–75
Electronic Fuel Injection on current two-strokes (crankcase injection)	15–25
Electronic Fuel Injection w/ Catalytic converter on current two-strokes	65–75

EPA's estimate for per engine mass emission rate reductions of carbon monoxide (CO) for personal watercraft and outboards ranges between 8 and 45 percent for most technologies, depending on the engine size. The direct injection two-stroke technology is the one exception. Due to the lean-burn nature of direct injection, EPA expects this technology to result in a per engine reduction in the brake specific emission rate of CO to be between 40 and 80 percent, depending on the particular engine size.

One inherent characteristic of current air-fuel crankcase scavenged two-stroke engines is the low emission rate for oxides of nitrogen (NO_X). The primary source of NO_X in spark-ignition engines is the oxidation of atmospheric nitrogen. The chemical reactions for production of NO_X have large activation energies, therefore NO_X formation is strongly dependent on temperature. In addition, since NO_X is formed by the oxidation of nitrogen (N_2), NO_X formation is also dependent on the availability of oxygen, (excess oxygen results from lean air-fuel ratios (A/F)). The condition at which the A/F ratio is chemically balanced for full combustion is called stoichiometry. At a rich A/F, when there is not enough oxygen present to fully burn the fuel, NO_X formation will be low relative to the same engine running under lean A/F, when there is more oxygen than necessary to fully burn the fuel. The current state of the marine outboard and personal watercraft industry has developed around the two-stroke crankcase charge scavenged gasoline spark-ignition power source. These engines are run at A/Fs on the rich side of stoichiometry, resulting in relatively low combustion temperature, incomplete combustion, and, therefore, low NO_X production.

However, the richness of the charge does not explain why current two-stroke engines have lower mass emission rates of NO_X than comparably powered four-strokes running at the same A/F. The explanation lies in the exhaust remaining in the combustion chamber of two-stroke engines from the previous power stroke. This exhaust, which was not completely scavenged by the air-fuel intake mixture, acts as internal exhaust gas recirculation (EGR). EGR is a well documented technique used to lower

NO_X production in four-stroke gasoline spark-ignition engines. EGR acts as a diluent to the fresh charge in the cylinder, reducing peak burned gas temperatures, and thereby reducing NO_X formation.

Currently unregulated two-stroke crankcase charge scavenged outboard and personal watercraft engines have NO_X emission rates which range from 0.5 g/kW-hr up to 4.0 g/kW-hr. EPA estimates that the two primary technologies which will be used to meet the proposed HC standard, conversion to four-stroke engines and two-stroke direct injection, will both result in an increase in the level of NO_X produced by outboard and personal watercraft engines. In order to meet the proposed level of HC emissions, EPA estimates that manufacturers will need to recalibrate their engines to run at leaner air-fuel ratios, resulting in higher combustion temperatures, more complete combustion, and some increase in NO_X formation. In addition, 4-stroke technology has little "internal EGR" which could reduce NO_X emission rates. On a per engine basis, depending on the engine size and technology used to meet the proposed HC standard, the mass specific emission rate of NO_X will increase to values in the range between 4 and 12 g/kW-hr. However, EPA estimates the overall average NO_X for all outboard and personal watercraft engines to be 6 g/kW-hr after HC standards are met. Some of this increase in NO_X emissions can be counter-balanced by use of external EGR technology.

The primary performance effect from the conversion from 2-stroke crankcase charge scavenged engines to 4-stroke engines is the decrease in power to weight ratio. Based on information available on currently marketed 2- and 4-stroke outboard engines, EPA estimates the weight of the power unit for both outboards and personal watercraft will increase between 23 and 35 percent for a given rated power. Power to weight impacts resulting from the use of 2-stroke direct injection technology should be minimal. EPA estimates the additional weight increase from the added components necessary for 2-stroke direct injection technology will result in power unit weight increases between 5 and 10 percent for a given rated power.

As discussed previously, EPA considers the use of catalytic convertors in certain applications (with limited conversion efficiency) on 2-stroke crankcase charge scavenged engines as a potentially feasible and cost effective control method for outboards and personal watercraft. The increase in packaging size will add some additional weight to the engine; however, EPA does not believe this weight increase will be as great as is involved with the conversion to four-stroke engines. EPA does not believe there will be any significant performance changes to engines with the application of catalytic convertors other than the decrease in power to weight ratio. However, EPA requests comment on any safety or performance effects with the potential use of catalytic convertors on marine engines.

2. Spark-Ignition Sterndrive and Inboard Engines

EPA has examined a range of technologies for the control of exhaust emissions from sterndrive and inboard spark-ignited engines. These technologies include the following: recalibration of current carbureted and electronic fuel injection (EFI) engines for maximum emission reduction benefit, conversion of current carbureted marine engines to electronic port fuel injection, and the application of oxidizing (or three-way) catalytic convertors to current 4-stroke spark-ignition marine engines. Table 3 shows the range of hydrocarbon reductions estimated by EPA and industry on a per engine basis for the three technologies investigated by EPA.

TABLE 3.—EPA AND MARINE ENGINE MANUFACTURER RANGE OF ESTIMATES OF POTENTIAL HYDROCARBON EMISSION REDUCTION, PER ENGINE, FOR CURRENT STERNDRIVE AND INBOARD ENGINES

Technology	HC percent reduction estimate ranges, per engine mass specific emission rate (%)
Recalibration of Current Engines	8–20
Electronic Fuel Injection	8–20
Application of Catalytic Convertors	65–75

EPA has determined that recalibration of current engines is the most cost effective approach.

J. Effect of Available Technologies on Emissions and Performance From Compression-Ignition Engines

EPA proposes that the existing nonroad compression-ignition regulations (40 CFR 89) to cover compression-ignition marine engines, with appropriate modifications to test procedures and implementation dates. Both the expansion to marine engines and the two areas of modification will affect to some extent the technologies which are available to control emissions. Interested readers should review the existing nonroad compression-ignition regulations (June 17, 1994; 59 FR 31306) for more detailed information about the technologies needed. The discussion below considers the changes to technologies used due to the differences between this proposal and the existing nonroad regulations.

1. Types of Compression-Ignition Marine Engines

EPA is proposing to regulate the two different types of compression-ignition marine engine applications: auxiliary power units and propulsion engines. Auxiliary power units are generally the same engines as those used as nonroad generator sets for land-based applications. Many marine propulsion engines also have similar land-based engine counterparts, though marine engines often have cooling systems which take advantage of the abundant water supply. Since NO_X is highly temperature dependant, the increased cooling availability should make achieving lower NO_X standards simpler than it would be for other engines.

2. Leadtime and Cost

EPA's existing nonroad compression-ignition engine rule phases in from 1996 through 2000 by different power categories. Today's rule is proposed to be effective for all except the largest marine engines on January 1, 1999. The standards are proposed to be effective for the largest marine engines (at or above 560 kW) on January 1, 2000, which is the same as the effective date for similar size new nonroad land-based engines. The technologies that EPA expects to be used to meet the proposed compression-ignition marine engine standards are available technologies that can be applied within the proposed timeline and at low cost. These technologies have been used for on-highway engines for several years and are now being applied to nonroad engines in response to the California Air Resources Board's heavy duty off-road equipment and EPA's rules. Further, cooling is already more effective on marine engines than on other nonroad engines, since a ready supply of water is available. More cooling is needed since the engines are in a confined place. Therefore, compliance for these engines should be simpler than for other compression-ignition nonroad engines. However, in tropic regions, this cooling water may be as warm as 90–95° F.

The Agency is proposing that all compression-ignition marine engines comply with the proposed standards in 1999 except those over 560 kW, which would be required to comply in 2000. This would allow marine engine manufacturers to continue their development plans for nonroad engines generally, while requiring them to apply it to marine engines as soon as possible. EPA believes that the larger engines should be able to comply with the standards on the same timeline as other nonroad engines because 5 years leadtime is quite generous given that no new technology is required to meet the standards proposed.

EPA believes, however, that allowing this much leadtime is not excessive because many of the manufacturers of these engines are the same manufacturers who must also comply with the 1998 on-highway engine standard and the other nonroad engine standards. While the various engines are similar and the technologies needed are available, engineering effort is needed to accommodate the differences between engines.

As discussed at length in the existing nonroad compression-ignition engine rule, the technologies determined by EPA to be feasible to meet the proposed standards will be available for reasonably low cost, at approximately $110 per engine, and will have high cost-effectiveness, at approximately $86 per ton of NO_x reduction. EPA expects that these cost and cost effectiveness numbers will also be the same for compression-ignition marine engines. EPA requests comments on the proposed standards, leadtime and costs for compression-ignition marine engines.

3. Test Procedure

The test procedure used for diesel compression-ignition marine engines is different from that used for most other compression-ignition engines (this is discussed in more detail in a later section: "Representativeness of the Test Procedures.") This difference results from the different duty cycles involved in marine as opposed to other applications. The test cycle for marine compression-ignition engines and the test cycle for land-based compression-ignition engines weight the test points differently, but both weight the high power levels significantly. While the ISO E5 5–Mode test cycle for compression-ignition marine engines used as propulsion engines has a lower load factor than the ISO C1 8–Mode test cycle adopted for other large nonroad compression-ignition engines, both cycles characterize a number of steady-state modes between idle and wide open throttle operation. The emission control technologies predicted to meet the large nonroad compression-ignition engine rule (59 FR 31306, June 17, 1994) are capable of proportional emission control over the entire range of operation covered by both ISO E5 and ISO C1. Therefore, proposing the same level of emission standards tested over the ISO E5 test cycle as were promulgated for use with the ISO C1 test cycle will result in use of the same technologies (some calibration differences may be needed). However, EPA is interested in comments on whether the leadtime should be extended to allow more testing to ensure engines meet the new standards.

K. Representativeness of the Test Procedures

1. ISO E4 Cycle for Gasoline Spark-ignition Marine Engines

The emission standards in this proposal for gasoline spark-ignition marine engines are based on the 5-mode steady state test procedure developed by the International Council of Marine Industry Associations (ICOMIA) and referred to by ISO as the E4 cycle. EPA's primary concerns in the choice of a test procedure are that the test procedure must accurately predict actual in-use emissions of the engine being tested and that the emission control technologies applied to the test engine to meet the proposed standard result in comparable emission reduction when applied to production engines in actual use.

EPA believes that a standard based on the ICOMIA test procedure is appropriate to ensure that marine engines will meet the emission reduction goals of this regulation while operating in-use. Although preliminary data show that emissions from marine engines are highly sensitive to transience, EPA has not yet gathered enough data to determine whether or not a transient test cycle better represents actual in-use engine operation than a steady state cycle. For these reasons, the duty cycle from the ICOMIA test procedure is being proposed for this rulemaking.

The International Bodensee Shipping Commission has also developed an 8–mode steady state cycle (BSO cycle) from the same data that was used to develop the ICOMIA cycle. This cycle contains the five modes from the ICOMIA plus an additional three modes. Consequently, different weighting factors are used to calculate composite emissions. Neither EPA nor industry testing has shown that significant additional control would be gained by using the three additional operating points in the BSO cycle. Therefore, the additional test length of the BSO cycle would not be justified. In addition, emissions from engines tested on the BSO steady state cycle could easily be converted to represent ICOMIA cycle results. Therefore, EPA proposes the option of using the BSO cycle and calculating the results based on the modes and weightings of the ICOMIA cycle.

2. ISO E5 Cycle for Marine Propulsion Compression-ignition Engines

The ISO E5 test procedure was developed from operational data collected by Volvo on recreational boats and data collected by the Norwegian government on several classes of commercial fishing vessels. For the purpose of developing the cycle, data from vessels with engines rated over 375 kW (500 hp) were not used.

EPA is proposing a marine cycle for compression-ignition marine engines different from that proposed for gasoline spark-ignition marine engines due to the significantly higher power factor typical of compression-ignition marine engine operation. This higher power factor is attributed to the typical use of large displacement hull vessels with compression-ignition marine engines,

while gasoline spark-ignition marine engines are typically used in smaller planing hull craft.

EPA requests comment on the possible use of the ISO E2 constant speed cycle for compression-ignition marine engines, as well as the ISO E3 propeller law cycle for compression-ignition marine engines. The principle difference between the ISO E3 and E5 cycle is the exclusion of an idle mode from the ISO E3 cycle which is included in the ISO E5 cycle. EPA requests comments on the distinction between the E3 and E5 cycles and the merits of including or not including an idle mode for compression-ignition marine propulsion engines.

3. ISO C1 Cycle for Marine Non-Propulsion Compression-Ignition Engines

EPA proposes to adopt the ISO C1 8–mode test cycle for all non-propulsion marine engines covered under this rulemaking to maintain consistency with similar requirements for other nonroad compression-ignition engines. The C1 cycle is identical to the 8–mode cycle used in 40 CFR 89 for nonroad compression-ignition engines greater than 37 kW. EPA solicits comment on the appropriateness of the ISO C1 cycle for non-propulsion compression-ignition marine engines.

However, the ISO D2 cycle may be more appropriate for generator sets because ISO D2 is intended to represent the generator set duty cycle. EPA solicits comment on the ISO D2 cycle as an alternative cycle for compression-ignition generator sets used on marine vessels. In addition, EPA solicits comment on the appropriateness of the 6–mode ISO G2 cycle for compression-ignition non-propulsion marine engines less than or equal to 20 kW. EPA is aware that this cycle is being utilized by the California Air Resources Board in their small utility, lawn and garden regulation for compression-ignition engines. EPA solicits comment on the rationale for using the 6–mode ISO G2 cycle and the 20 kW break-point as opposed to the 8–mode ISO C1 cycle for all compression-ignition non-propulsion marine engines.

L. Safety/Noise/Energy Issues

Pursuant to section 213(a)(3) of the 1990 Clean Air Act, if EPA decides to promulgate standards for new nonroad engines, EPA must consider the noise, energy, and safety factors associated with such regulations. Each of these factors is considered below.

1. Noise

EPA does not believe that the regulations proposed in this rule will significantly affect the noise levels associated with marine engines or marine vessels. The type of engine changes which EPA believes will be used to meet the proposed exhaust emission standards will not increase engine noise. Noise levels from new technology engines as a result of this rule are expected to remain the same or be reduced compared to current technology engines. EPA requests comments on this issue.

2. Energy

The regulations proposed in this rulemaking should result in significant fuel savings. Current technology two-stroke engines, which are widely used in marine vessels, do not use fuel efficiently. An unburned fuel/oil/air mixture is used to push the exhaust gas out of the cylinder (this is called "scavenging"). As a result, a substantial portion of the unburned fuel and oil is pushed out of the cylinder with the exhaust gases. This combustion technology can result in wasting more than 25–35 percent of the fuel consumed. These losses will be greatly alleviated by the proposed regulations because emissions of such magnitude would fail to meet the standards. The regulations are likely to encourage the widespread use of 4-stroke technology, 2-stroke direct injection technology, or other "clean" technologies to alleviate the problem. These technologies use a more complete combustion process and do not use air/fuel scavenging of exhaust. As a result, more fuel will be burned in the engine instead of being exhausted unburned, and work done per unit of fuel will be increased.

For example, based on manufacturer data from 1991, EPA estimates that changing outboard engines from current technology 2-stroke to 4-stroke technology will result in an average decrease in fuel consumption of approximately 31.5 percent. EPA expects similar results from engines that use direct injection technology.

3. Safety

The federal agency that regulates safety issues for marine vessels is the U.S. Coast Guard. The regulations promulgated by the Coast Guard fall into three general categories: (1) Ensuring the safety of passengers (regulations for personal flotation devices, and so forth); (2) reducing the risk of fire hazards (regulations for electrical systems, fuels systems, and ventilation systems); and, (3) for larger vessels, ensuring vessel integrity (strength and adequacy of design, construction, choice of materials for machinery, boilers, pressure vessels, and safety valves and piping).[15]

EPA has sent the proposed regulations to the Coast Guard for review, and their comments are in the docket. It is EPA's view that the proposed regulations do not violate or conflict with Coast Guard safety mandates. The regulations proposed in this rulemaking could be affected by two sets of Coast Guard regulations: (1) Compartment ventilation requirements and (2) fuel tank ventilation requirements.

Coast Guard regulations require that boats with compartments not open to the air and containing a permanently installed gasoline engine with a cranking motor be equipped with power-assisted ventilation. This ventilation system is necessary because gasoline fumes may accumulate in these compartments through evaporation, posing a fire hazard when the engine is started. The Coast Guard also mandates that compartments that contain: (1) An enclosed engine, (2) openings between it and a compartment that requires ventilation, (3) permanently installed fuel tanks, (4) a fuel tank with a vent that opens into the compartment, or (5) a nonmetallic fuel tank be equipped with natural ventilation to the exterior of the boat. The regulations proposed in this rulemaking do not require any systems that would violate any of these requirements. If EPA determines that evaporative emissions regulations are necessary, EPA will work with the Coast Guard to ensure that safety is not compromised.

Second, Coast Guard regulations mandate fuel tank vents on all fuel tanks. Since fuel gauges are not well-calibrated on boats, in part because fuel tanks come in so many sizes and shapes, and since boat operators want to be sure they have a full tank when they leave the dock, refueling often continues until some fuel spills out of the tank. The vent is to ensure that the spillage does not fall in the boat, creating a fire hazard. However, fuel vents also permit the release of evaporative emissions. Coast Guard representatives expressed concern about closed fuel systems that could be mandated to reduce these evaporative emissions. Closed fuel systems are not currently permitted under Coast Guard regulations and could cause a potential safety hazard. Again, the regulations proposed in this rulemaking do not require any systems that would violate any of these

[15] See Memorandum to the Docket regarding marine safety issues on recreational boats.

requirements, since EPA has decided not to regulate evaporative emissions at this time. However, EPA intends to continue working with the Coast Guard and boat manufacturer groups to encourage closure of this vent at most times and especially when fueling is completed.

At the same time, the proposed regulations give rise to a safety issue that has not yet been considered by the Coast Guard. In discussions with EPA, representatives of the Coast Guard expressed concern about the use of fuel injection systems on marine engines.[16] In these systems, the fuel must be under pressure in the fuel line. This is a potential safety hazard that could be dangerous, especially when the craft is far from shore. Although the regulations proposed in this preamble do not specifically call for fuel injection systems, it is the case that marine engine manufacturers already include these systems on some engines and may use them more in response to these regulations. For this reason, it is important for EPA and the Coast Guard to consider the safety issues relevant to fuel injection systems. EPA requests comment from both the general public and the Coast Guard on the issue of the safety of fuel injection systems on marine engines. Comments from the Coast Guard are included in the docket for this rulemaking and are described above.

M. Banking of Emission Credits for Gasoline Spark-Ignition Marine Engines

1. Banking Unused Credits During the Phase-in Period for Future Use

EPA is proposing to allow manufacturers to carry positive credit balances over to future model years to help achieve compliance with standards applicable in those future years. This is known as an emission credit banking program. The rationale for allowing banking is that the value to society of achieving greater emission reductions early is greater than the detriment caused by smaller reductions in the future, just as we value money more today than tomorrow (and hence pay interest on loans). However, since there is also an interest in maintaining reductions into the future, EPA in general has not allowed unrestricted banking and does not propose to do so today. As the program proposed today phases in the required reductions and allows for lead time, special issues need to be considered.

[16] See Memorandum to the Docket, cited above.

2. Early Banking (Banking Prior to Phase-in Period)

EPA is not proposing to allow early banking of emission credits, that is, banking of credits prior to the implementation date of model year 1998. The main reason for this is that allowing early banking would require early certification of every engine family of a given manufacturer since net emissions credits are determined based on the entire product line. EPA believes that allowing early banking for new product offerings with lower emissions will not encourage manufacturers to bring such engines into the market sooner or ease the transition to control technology since all families would have to be certified early. The standards structure already provides incentives to bring new product offerings into the market sooner because there is greater credit generation potential in the early phase-in years. EPA requests comment on allowing early banking.

3. Credit Life

Other mobile source credit banking programs allow banked credits to be used in the three years following generation. This is referred to as a three year potential credit life. EPA is proposing a three year potential credit life for this rule in order to be consistent with the other mobile source programs on this aspect. However, EPA is requesting comment on shortening this credit life to a two year or one year credit life. Given that the standards structure is based on a declining average emission level, it may be reasonable to limit the potential credit life to two years because credits generated in previous years would have been calculated from a higher average standard level. EPA is not proposing in this rulemaking to limit the potential credit life to two years or one year because of the possibility that shorter credit life may discourage early emission reduction. Moreover, even if the past year's credits were generated from a higher average standard level, they would still represent emission reductions beyond the average standard level requirement. This reduction is good for the environment. EPA requests comments on the potential benefits associated with a credit life of three years, of less than three years, or of greater than three years.

As described, society values earlier emission reductions more than later ones. Therefore, the year after emission reductions are earned, society values them less than it did in the year they were earned, and the longer the period between credits earned and used, the greater the benefits to society. Similarly, from the manufacturers' point of view, there is an incentive to use credits sooner rather than later. EPA is proposing expiration of credits since if it is not profitable for the manufacturers to use credits within the proposed 3 year life, then the necessity of the banked credits intended to ease the transition to tighter regulations is questionable. Further, by limiting credit life, EPA can better ensure that no manufacturer will stockpile credits early in the program when they may be easier to obtain and then turn them loose in a later year when they could significantly impact implementation of declining standards. Therefore, EPA is not proposing to extend the potential credit life beyond 3 years.

4. Determination of Amount of Credit: Year of Use v. Year of Generation

Under the regulations proposed today, the amount of banked credits would be determined as of the year they are generated. EPA has considered and is requesting comment on whether the amount of banked credits should instead be determined in the year of use. Under this option, if a manufacturer generated banked credits in the first year of the phase-in, but waited to use those credits until the third year of the phase-in, the manufacturer could only claim the credits that the engine would have generated in the third year of the phase-in.

For example, if the average emission standard for a 100 kW engine was 100 g/kw-hr in 1998 and the engine achieved a controlled emission level of 20 g/kw-hr, then the engine brake specific emission credit amount would be 80. However, the same engine would generate less credit in the year 2001 because the average emission standard would be less, at approximately 67 g/kw-hr. In the year 2001, the engine would only generate a brake specific credit amount of 47. Therefore, under this alternative, if the manufacturer had banked credits calculated using 80 brake specific credits after model year 1998 and had wanted to use them in the model year 2001, then only 47 of the 80 brake specific credits would be available for use. This is called determination of the amount of credits by year of credit use. EPA is not proposing this. EPA is proposing to determine the amount of credits by year of credit generation.

The amount of banked credits is reduced under this option where the amount of credits is determined by year of credit use. EPA is not proposing this option because the Agency believes that it reduces the incentive to achieve emission reductions beyond the

required level in the early years of the program.

This program may be appropriate for today's proposal but is unlikely to be appropriate for other regulations. In today's proposal the standard is phased in gradually, yet it is very unlikely that engine manufacturers would choose to lower the emissions of any particular engine gradually. The technologies which will be used to meet the standards proposed today achieve very significant reductions; the reductions will be achieved in large "chunks." However, manufacturers phase in new technologies by using the technology on a portion of their fleet, not by adding more and more control to the fleet as a whole. Thus, in the third year, manufacturers are still earning credits and selling the engine that earned credits in the first year. Under today's proposal the same engine earns more credits in the first year than in the third. Since we would like engines cleaned up as early as possible, EPA is proposing this as the standard structure.

5. Banking Restriction for Outboard/Personal Watercraft NO_X Emissions

EPA proposes no banking of NO_X emission credits for the model years 1998 through 2005 for the outboard/personal watercraft averaging set. The reason for this concerns the level of the NO_X standard in relation to the HC emission standards in the phase-in years for this averaging set. So as not to limit the HC credit generation capabilities of the engine families during phase-in, EPA thinks it necessary to set the NO_X standard during phase-in at the level most appropriate for the fully phased-in HC reductions for model year 2006. This means that the NO_X standard is a fairly loose, flexible standard for the phase-in years. Because it is fairly loose and flexible, an additional banking provision would be excessively flexible and is unjustified.

EPA will not consider allowing NO_X credit banking during the model years 1998 through 2006 at the 6.0 g/kW-hr standard. EPA would only consider NO_X credit banking if the NO_X standard was incrementally increased in conjunction with the phased-in HC emission standards for model years 1998 through 2006. EPA requests comment on this option or other options which would make NO_X credit banking acceptable during phase-in.

N. Tracking Engine Sales to Point of First Retail Sale

For purposes of calculating emission credits, accurate sales levels must be used. EPA intends manufacturers to include all engines which are introduced into commerce in the U.S. for sale in the U.S. in the sales estimate. EPA does not include exports in this regulation. Therefore, it is important that manufacturers report sales levels to EPA which account for those engines actually introduced into commerce in the U.S., excluding any engines which are exported either by the engine or vessel manufacturer.

EPA is proposing to define "eligible sales" for the purposes of averaging, trading, and banking provisions as "marine engines sold for purposes of being used in the United States and include any engine introduced into commerce in the U.S. to be sold for use in the U.S." Therefore, EPA is requiring manufacturers to track the sales of engines to the point of first retail sale to determine which engines will remain in the U.S. and which engines will be exported. EPA is proposing to define "point of first retail sale" to mean "the point at which the engine is first sold directly to an end user." Generally, this point is with the boat or engine dealer. If the engine is sold first to a boat or vessel manufacturer, the boat or vessel manufacturer may serve as point of first retail sale if that manufacturer can determine with certainty whether the boat is to be exported or sold to a U.S. purchaser.

The main issue regarding tracking engine sales is the issue of determining which engines are exported and which engines are sold for use in the U.S. EPA's intent is to require manufacturers to track sales of engines only up to the point in the distribution chain where this determination can be made. EPA is willing to assume that if the engine is sold to a retail boat dealer in the U.S. that the engine is not exported. Further, EPA is willing to assume that if the engine is exported to a foreign dealer, then the engine does not re-enter the U.S.

EPA requests comment on these definitions and alternative methods of tracking engines to satisfactorily determine whether an engine is exported so that accurate U.S. sales are known. Comments are also requested on the nature of the distribution chain for the various types of marine engines.

O. Nonconformance Penalties for Marine Engines

Section 213(d) of the Act requires marine engine emissions standards to be subject to sections 206, 207, 208, and 209 of the Act, with such modifications as EPA deems appropriate. Pursuant to section 206(g)(1) of the CAA, the on-highway heavy-duty engine emission compliance program provides that, in certain cases, engine manufacturers whose engines cannot meet emission standards may continue to receive a certificate of conformity and continue to sell their engines provided they pay a nonconformance penalty (NCP). EPA believes that it has the authority, pursuant to section 213 of the CAA, to permit such a program for marine engines. However, EPA believes that the use of NCPs may not be warranted given the form of the standards proposed in today's action and EPA is not proposing NCPs for the engines included in this proposal. NCPs are designed to provide relief for engine manufacturers who cannot develop the emission control technology needed to meet technology forcing standards. The Agency believes the proposed averaging, banking, and trading program should provide manufacturers sufficient flexibility to meet the proposed standards and should alleviate any concerns that manufacturers may have regarding their inability to bring some engines into compliance with the proposed standards. EPA requests comment on whether or not NCPs would be appropriate in the context of this proposed rulemaking.

P. New Vessels Must Incorporate New Engines

EPA is aware that some new vessels are currently manufactured without new engines incorporated (e.g., air boats). EPA is concerned that such practices may compromise the intent and integrity of the proposed regulations. EPA is proposing to prohibit the sale of new vessels with old engines. This prohibition is contained in § 91.8 in the proposed regulations.

EPA does not intend this proposed restriction on new vessels to apply to vessels normally sold without any engine, such as rowboats and canoes. EPA requests comment on the adequacy of the proposed § 91.8 to meet this intent. Also, EPA requests comment on the necessity of this restriction.

Q. Emerging Market Segments

EPA is aware of several emerging market segments of marine vessels. Both jet boats and air boats are new types of vessels gaining in popularity. EPA is proposing to include jet boats in the outboard/personal watercraft category and airboats in the sterndrive/inboard category. However, EPA requests comments on jet boats, air boats, or any type of vessel not mentioned in this NPRM. Commenters should address how any such vessel should be handled in the regulations.

VI. Cost Analysis

Refer to Chapters 1 and 2 of the Regulatory Impact Analysis for further discussion of all individual cost components and calculation methodology.

A. Gasoline Spark-Ignition Engine Cost Analysis

1. Aggregate Annual Cost

EPA estimates the cost of this rule to be approximately $14 million in 1998 increasing to approximately $300 million in the year of 2006. The cost analysis estimates the annual cost and the price increase to consumers assuming that all manufacturers participate in averaging and trading of emission credits.

EPA calculated manufacturers' costs on an aggregate annual basis. These costs consider the aggregate cost to all engine manufacturers to design, certify, and produce all current engines to meet the standards proposed in this rule. This average annual cost estimate includes costs for hardware, research and development, test facilities, certification and enforcement of engine families.

2. Consumer Cost Summary

In assessing the cost to the consumer, three areas are analyzed: change to the cost of the engine, cost of fuel, and cost of maintenance.

As a conservative assumption, EPA assumes that increased costs to the manufacturers will be fully passed on to the consumer through an increase in the retail price of the engine. The increase in the retail price of the engine to the consumer is estimated using a percentage increase over the average amortized and discounted per engine manufacturers' cost. The estimated price increase to consumer per engine on average due to the proposed rule in 2006 is approximately $700 per engine. Because of the phase-in structure of the proposal, costs are less during phase-in. For instance, EPA estimates the price increase in year one to be approximately $32 per engine on average. Over time, EPA estimates the cost increase will stabilize at approximately $565 once research and development and other capital costs have been recovered.

B. Compression-Ignition Engine Cost Analysis

Because EPA is proposing the same emission standards and comparable certification and enforcement measures for compression-ignition marine engines as the Agency promulgated for large nonroad compression-ignition engines, the cost estimates for the final rule for nonroad compression-ignition engines greater than 37 kw have been used to estimate the cost of the proposed compression-ignition marine engine emission standard.

The per-engine cost estimate is $220 per engine for the nonroad compression-ignition engine regulation for engines greater than 37 kw. EPA estimates sales of marine compression ignition engines to be approximately 10,000 units in 1999, the proposed first year of implementation of the compression-ignition marine engine emission standards. This indicates a total aggregate cost in 1999 of about $2 million.

EPA requests comment from the compression-ignition marine engine manufacturers regarding their cost estimates specific to marine applications of compression-ignition engines. Comments are requested on the fixed costs of production such as development and production line costs, testing and test facility costs, and administrative costs. Variable costs should also be submitted, including cost for additional hardware, fuel consumption impacts, maintenance impacts, and warranty related costs.

VII. Environmental Benefit Assessment

National Ambient Air Quality Standards (NAAQS) have been set for criteria pollutants which adversely affect human health, vegetation, materials, and visibility. The primary criteria pollutants affected by this rule include, ozone and hydrocarbons (HC) for gasoline spark-ignition engines and oxides of nitrogen (NO_X) for compression-ignition engines. In addition, this rule will have some impact on the other criteria pollutants, particles smaller than 10 microns (PM_{10}), and carbon monoxide (CO). EPA has determined the standards set in this rule will reduce HC emissions from spark-ignition engines and reduce NO_X from compression-ignition engines and help areas come into compliance with the ozone NAAQS. The following provides a summary of the reduction expected and the health effects of HC and NO_X emissions. The underlying analysis is described in greater detail in Chapter 3 of the draft Regulatory Impact Analysis.

A. Gasoline Spark-Ignition Engine HC Reduction

The proposed gasoline spark-ignition marine engine HC emission standards should decrease HC emissions from marine engines by approximately 75% from projected baseline emission levels by the year 2025. HC emission levels are estimated to be stabilized at this percentage reduction through complete fleet turnover by the year 2051. Results are summarized in Table 4.

TABLE 4.—HC EMISSION SUMMARY: GASOLINE SPARK-IGNITION MARINE ENGINES

Year	Appx. projected aggregate controlled HC level (tons)	% HC reduction from projected baseline estimate
1998	520,000	1
2006	410,000	32
2010	310,000	52
2025	210,000	74
2051	220,000	74

B. Diesel Compression-Ignition Engine NO_X Reduction

Emission reductions due to this regulation for diesel compression-ignition marine engines are expected to be equivalent on a per-engine basis to the reductions achieved from land-based compression-ignition engines. Land-based compression-ignition engines were estimated to achieve a reduction in NO_X of approximately 37% per year on a per-engine basis (see 59 FR 31306).

Reductions in the inventory will occur through the introduction of new, controlled engines into the in-use fleet. The annual percentage reduction in the NO_X inventory of marine diesel engines is dependent upon the useful lives of these engines, the rate of attrition of old engines from the in-use fleet, and the rate of new sales added to the in-use fleet each year. EPA does not have sufficient information at this time to estimate future inventory levels and requests comment on the hours engines are used per year, the loads placed on engines, the average and full useful lives of these engines including rebuilds, the survival probability function, engine populations, aggregate sales estimates according to engine size (i.e., kiloWatt), estimates of future sales growth, and any related information.

C. Health and Welfare Effects of Tropospheric Ozone

EPA's primary reason for controlling HC and NO_X emissions from marine engines is the role of these pollutants in forming ozone (O_3). Of the major air pollutants for which national ambient air quality standards (NAAQS) have been designated under the Clean Air Act, the most widespread problem continues to be ozone, which is the most prevalent photochemical oxidant

and an important component of smog. Ozone is a product of the atmospheric chemical reactions involving hydrocarbons, nitrogen oxides and other compounds. These reactions occur as atmospheric oxygen and sunlight interact with hydrocarbons and nitrogen oxides from both mobile and stationary sources.

A critical part of this problem is the formation of ozone both in and downwind of large urban areas. Under certain weather conditions, the combination of HC and NO_X can result in urban and rural areas exceeding the national ambient ozone standard by a factor of three. The ozone NAAQS represents the maximum level considered protective of public health by the EPA.

Ozone is a powerful oxidant causing lung damage and reduced respiratory function after relatively short periods of exposure (approximately one hour). The oxidizing effect of ozone can irritate the nose, mouth, and throat causing coughing, choking, and eye irritation. In addition, ozone can also impair lung function and subsequently reduce the respiratory system's resistance to disease, including bronchial infections such as pneumonia.

Elevated ozone levels can also cause aggravation of pre-existing respiratory conditions such as asthma. Ozone can cause a reduction in performance during exercise even in healthy persons. In addition, ozone can also cause alterations in pulmonary and extrapulmonary (nervous system, blood, liver, endocrine) function.

The current NAAQS for ozone of 0.12 ppm is based primarily on the level at which human health effects begin to occur. However, ozone has also been shown to damage forests and crops, watershed areas, and marine life.[17] The NAAQS for ozone is frequently violated across large areas in the U.S., and even after 20 years of efforts aimed at reducing ozone-forming pollutants, the ozone standard has proven to be exceptionally difficult to achieve. High levels of ozone have been recorded even in relatively remote areas, since ozone and its precursors can travel hundreds of miles and persist for several days in the lower atmosphere.

Ozone damage to plants, including both natural forest ecosystems and crops, occurs at ozone levels between 0.06 and 0.12 ppm.[18] Repeated exposure to ozone levels as low as 0.04 ppm can cause reductions in the yields of some crops above 10%.[19] While some strains of corn and wheat are relatively resistant to ozone, many crops experience a loss in yield of 30% at ozone concentrations below the NAAQS.[20] The value of crops lost to ozone damage, while difficult to estimate precisely, is on the order of $2 billion per year in the U.S.[21] The effect of ozone on complex ecosystems such as forests is even more difficult to quantify. However, growth in many species of pine appears to be particularly sensitive to ozone. Specifically, in the San Bernadino Mountains of southern California, the high ozone concentrations are believed to be the predominant cause of the decline of the endangered ponderosa pine.[22]

Finally, by trapping energy radiated from the earth, tropospheric ozone may contribute to heating of the earth's surface, thereby contributing to global warming (that is, the greenhouse effect).[23]

D. Roles of VOC and NO_X in Ozone Formation

Both volatile organic compounds (VOC) (used interchangeably with hydrocarbons for the purposes of this rule) and NO_X contribute to the formation of tropospheric ozone through a complex series of reactions. EPA's understanding of the importance of these pollutants in this process has been evolving along with improved emission inventories and modeling techniques. The role of NO_X has been controversial because, depending on local conditions, NO_X reductions can either promote or retard ozone formation near the emission source(s), while downwind ozone concentrations will eventually decline in response to NO_X reductions.

In general, the ratio between the ambient concentrations of VOC and NO_X in a localized area is an indicator of the likely effectiveness of VOC and/or NO_X reductions as ozone control measures. If the level of VOC is high relative to the level of NO_X (that is, a ratio of 20 to 1), ozone formation is limited by the amount of NO_X present, making reduction of NO_X emissions an effective strategy for reducing ozone levels. Alternatively, if the level of VOC is low relative to the level of NO_X (that is, in a ratio of 8 to 1), efforts to control VOC would be expected to be a more effective means of reducing ozone concentration.

For many years, it was believed that ozone formation was VOC-limited in most nonattainment areas. Consequently, although both NO_X and VOC emissions are regulated for certain source types, the primary focus of past ozone abatement strategies has been VOC. However, many areas have yet to attain the ozone standard. In recent years, state-of-the-art air quality models and improved knowledge of atmospheric chemistry have indicated that control of NO_X in addition to VOC is necessary for effective reduction of ozone in many parts of the United States.

Based upon recent scientific research, National Academy of Science has determined that in many parts of the country NO_X control is generally a very beneficial strategy for ozone reduction. However, under some circumstances, NO_X reductions without accompanying VOC control may actually increase ozone in a few urban cores such as downtown Los Angeles and New York City.[24] In the recent report, researchers emphasize that both VOC and NO_X controls are needed in most areas of the U.S.[25]

E. Smoke

Smoke from compression-ignition engines has long been considered a significant nuisance that can cause considerable economic, visibility, and aesthetic damage. The large carbon particles remain suspended for long periods and refract light, thus causing the negative environmental effect of reduced visibility. Furthermore, these particles are often wet and cause costly damage through soiling of urban buildings, homes, cars and other property. Such particles also soil human skin and clothes and are associated with increased odor. While there is no concrete connection between visible smoke and direct health effects, there are indications that visible smoke may have an adverse effect on health. In any case, there are substantial costs to society in terms of living with a dirtier environment or alternatively, paying to clean it up. Further, the public is particularly aware of this highly visible pollutant that comes into contact with them and their property. Public support for effective environmental programs is hampered by the negative impression brought about by the substantial nuisance of a visible pollutant that is

[17] U.S. Environmental Protection Agency, Review of the National Ambient Air Quality Standards for Ozone—Assessment of Scientific and Technical Information: OAQPS Staff Paper, EPA–450/2–92–001, June 1989.

[18] U.S. EPA, Review of NAAQS for Ozone.

[19] U.S. EPA, Review of NAAQS for Ozone, p. X–10.

[20] U.S. EPA, Review of NAAQS for Ozone, p. X–10.

[21] U.S. EPA, Review of NAAQS for Ozone, p. X–22.

[22] U.S. EPA, Review of NAAQS for Ozone, p. X–25.

[23] Rethinking the Ozone Problem, p. 22.

[24] NRC, Rethinking the Ozone Problem, pp. 359–377.

[25] NRC, Rethinking the Ozone Problem.

left uncontrolled, even given that the health effects of such pollutant are uncertain. It undermines EPA emission control programs to allow a highly visible pollutant that can have substantial cost to society remain uncontrolled while tightly controlling sources that emit no visible pollutants. The compression-ignition smoke standards proposed today should reduce smoke significantly.

VIII. Cost-Effectiveness

In evaluating various pollution control options, EPA considers the cost-effectiveness of the control. Also, § 213 of the Act requires that EPA consider cost when developing emission standards. The cost-effectiveness of a pollution control measure is typically expressed as the cost per ton of pollutant emissions reduced. Other things being equal, the Agency prefers to target emission reductions that cost less per ton of emissions reduced.

A. Gasoline Spark-ignition Engines

The proposed HC standard for spark-ignition marine engines is estimated to have a cost-effectiveness of $718 per ton of HC removed from the exhaust of the affected engines. This is based on the ratio of the present value of the stream of projected costs to the present value of the stream of projected benefits.

B. Diesel Compression-ignition Engines

The proposed NO_X standard for compression-ignition marine engines is estimated to have the same cost-effectiveness as the final nonroad compression-ignition engine regulation for engines above 37 kw, which is $188 per ton of NO_X removed from the exhaust of the affected engines. This is based on the ratio of the present value of the stream of projected costs to the present value of the stream of projected benefits.

IX. Public Participation

A. Comments and the Public Docket

EPA welcomes comments on all aspects of this proposed rulemaking. While EPA is not publishing the proposed regulatory language, EPA welcomes comments on it. EPA has sent copies of the language to those business, environmental, and governmental entities expressing interest in this proposal and invites others to request a copy immediately. See the "Obtaining Copies of the Regulatory Language" at the beginning of **SUPPLEMENTARY INFORMATION.** Commenters are especially encouraged to give suggestions for changing any aspects of the proposal that they find objectionable. All comments, with the exception of proprietary information, should be directed to the EPA Air Docket Section, Docket No. A–92–28 (see **ADDRESSES**).

Commenters who wish to submit proprietary information for consideration should clearly separate such information from other comments by (1) labeling proprietary information "Confidential Business Information" and (2) sending proprietary information directly to the contact person listed (see **FOR FURTHER INFORMATION CONTACT**) and not to the public docket. This will help insure that proprietary information is not inadvertently placed in the docket. If a commenter wants EPA to use a submission labeled as confidential information as part of the basis for the final rule, then a nonconfidential version of the document, which summarizes the key data or information, should be sent to the docket.

Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it will be made available to the public without further notice to the commenter.

B. Public Hearing

Any person desiring to present testimony regarding this proposal at the public hearing (see **DATES**) must notify the contact person listed above of such intent at least ten days prior to the opening day of the hearing. The contact person should also be given an estimate of the time required for the presentation of the testimony and notification of any need for audio/visual equipment. Testimony will be scheduled on a first come, first serve basis. A sign-up sheet also will be available at the registration table the morning of the hearing for scheduling testimony.

EPA suggests that approximately 50 copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, EPA would find it helpful to receive an advance copy of any statement or material to be presented at the hearing at least one week before the scheduled hearing date. This is to give EPA staff adequate time to review such material before the hearing. Advance copies should be submitted to the contact person listed.

The official records of the hearing will be kept open for 30 days following the hearing to allow submission of rebuttal and supplementary testimony. All such submittals should be directed to the Air Docket, Docket No. A–92–28 (see **ADDRESSES**).

Ms. Mary Smith, Acting Director of the Office of Mobile Sources, is hereby designated Presiding Officer of the hearing. The hearing will be conducted informally, and technical rules of evidence will not apply. A written transcript of the hearing will be placed in the above docket for review. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceeding.

X. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because it may adversely affect in a material way that sector of the economy involved with the production of marine engines. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Reporting and Recordkeeping Requirements

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* EPA has prepared eight Information Collection Request (ICR) documents for this proposal. Copies of the ICR documents may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M

St., SW. (mail code 2136); Washington, DC 20460 or by calling (202) 260–2740.

The eight ICR documents that have been prepared are:

EPA ICR document No.	Type of information
1722.01	Certification/ABT.
282.07	Emission Defect Information.
1723.01	Importation of Nonconforming Engines.
1724.01	Selective Enforcement Auditing.
12.08	Engine Exclusion Determination.
95.07	Precertification and Testing Exemption.
1725.01	Manufacturers' Assembly Line Testing.
1726.01	Manufacturers' In-use Testing.

Each ICR document estimates the public reporting, recordkeeping, and testing burden for collecting the specified information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information. EPA has estimated that the public burden for the collection of information for all ICRs under this proposed rule would average approximately 6,050 hours annually for a typical engine manufacturer. The hours spent by a manufacturer on information collection activities in any given year would be highly dependent upon manufacturer specific variables, such as the number of engine families, production changes, emissions defects, etc.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M St., SW. (mail code 2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Impact on Small Entities

The Regulatory Flexibility Act of 1980 requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis (RFA). The RFA explores options for minimizing those impacts.

EPA has recently adopted a new approach to regulatory flexibility:[26] for purposes of EPA's implementation of the Act, any impact is a significant impact, and any number of small entities is a substantial number. Thus, EPA will consider regulatory options for every regulation subject to the Act that can reasonably be expected to have an impact on small entities. Therefore, in light of this new approach, EPA has determined that, in the absence of provisions to take economic effects into account, this rule would likely have a significant effect on a substantial number of small entities. As a result, in addition to the flexibility inherent in averaging, trading, and banking of emissions, EPA has tailored this rule to minimize the cost burdens imposed on smaller engine manufacturers.

The proposed regulations contain certification requirements for new engines, in-use testing requirements for controlled engines, manufacturer assembly line and Selective Enforcement Auditing provisions for the testing of production engines.

The certification program has been structured in this proposal such that all manufacturers may take advantage of a more simplified certification process than that currently mandated in the on-highway program. Testing requirements for test engines are reduced. The application and certification process is more straightforward.

The in-use testing program is structured such that manufacturers with lower annual production volumes have a lower minimum number of engines which must be tested. This places the burden of the in-use testing mostly on manufacturers with high production volumes. Provisions are also allowed for manufacturers with a limited number of product lines. Also, manufacturers with very low production volumes are allowed maximum flexibility in procuring engines to be tested.

The SEA program is structured such that the annual limit on the number of SEA's that EPA may perform is lower for manufacturers with lower projected annual production. Additionally, manufacturers with high projected annual production but fewer engine families will have a lower annual limit. Furthermore, manufacturers with low projected annual production may perform fewer audit tests per day to minimize the SEA burden on its test facilities.

EPA is proposing that vessel manufacturers must correctly use engines that are certified upon implementation of these regulations. However, EPA has decided to make the use of non-certified engines for United States-marketed vessels a prohibited act rather than requiring vessel manufacturers to report to EPA that they are using certified engines in their vessels being consumed in the United States. EPA decided to make these provisions prohibited acts in order to reduce any potential reporting or recordkeeping burden for engine and vessel manufacturers. Manufacturers who attempt to sell vessels to the United States market which uses noncertified engines will be voluntarily reported to EPA by their competitors. EPA has proposed stiff fines on prohibited acts. Competition should effectively police these prohibited acts as competitors have a competitive incentive to make sure that no vessel manufacturer is dumping equipment with lower cost, unlawful, noncertified, or incorrectly used engines into the U.S. market.

EPA considered, but rejected, the notion of exempting small manufacturers from enforcement programs or from the regulation entirely. A more proportionate sharing of cost burden was deemed appropriate. The pollution emitted by each of these engines not only contributes to ambient air quality problems but also has health impacts on the user of the engine who is in close proximity to the exhaust emissions. See "VI. Environmental Benefit Assessment" for a discussion of the health impacts of the related exhaust pollutants.

List of Subjects in 40 CFR Parts 89 and 91

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Labeling, Nonroad source pollution, Reporting and recordkeeping requirements.

Dated: October 28, 1994.

Carol M. Browner,

Administrator.

[FR Doc. 94–27401 Filed 11–8–94; 8:45 am]

BILLING CODE 6560–50–P

[26] Habicht, F. Henry II, Deputy Administrator. Internal EPA Memorandum, "Revised Guidelines for Implementing the Regulatory Flexibility Act," April 9, 1992.

federal register

Wednesday
November 9, 1994

Part IV

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. § 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the Federal Register, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary - Indian Affairs, Department of the Interior, through her delegated authority, has approved the Tribal-State Compact between the Tonkawa Tribe of Oklahoma and the State of Oklahoma, which was executed on June 10, 1994.

DATES: This action is effective upon date of publication.

FOR FURTHER INFORMATION CONTACT: Larry Scrivner, Acting Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240 (202) 219–4068.

Dated: October 28, 1994.

Ada E. Deer,

Assistant Secretary, Indian Affairs.

[FR Doc. 94–27728; Filed 11–8–94; 8:45 am]

BILLING CODE 4310–02–P

federal register

Wednesday
November 9, 1994

Part V

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

October 28, 1994.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Amendment to Approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. § 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100-497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Amendments to Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary-Indian Affairs, Department of the Interior, through her delegated authority, has approved the Amendment to the Tribal-State Compact Between the Mississippi Band of Choctaw Indians and the State of Mississippi, which was executed on August 26, 1994.

DATES: This action is effective upon date of publication.

FOR FURTHER INFORMATION CONTACT: Larry Scrivner, Acting Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240 (202) 219-4068.

Dated: October 28, 1994.

Ada E. Deer,

Assistant Secretary, Indian Affairs.

[FR Doc. 94-27729; Filed 11-8-94; 8:45 am]

BILLING CODE 4310-02-P

federal register

Wednesday
November 9, 1994

Part VI

Department of Health and Human Services

Food and Drug Administration

International Conference on Harmonisation; Dose-Response Information to Support Drug Registration; Guideline; Availability; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93D–0194]

International Conference on Harmonisation; Dose-Response Information to Support Drug Registration; Guideline; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a final guideline entitled "Dose-Response Information To Support Drug Registration." The guideline is applicable to both drugs and biological products. This guideline was prepared by the Efficacy Expert Working Group of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guideline describes why dose-response information is useful and how it should be obtained in the course of drug development. This information can help identify an appropriate starting dose as well as how to adjust dosage to the needs of a particular patient. It can also identify the maximum dosage beyond which any added benefits to the patient would be unlikely or would produce unacceptable side effects. This guideline is intended to help ensure that dose response information to support drug registration is generated according to sound scientific principles.

EFFECTIVE DATE: November 9, 1994.

ADDRESSES: Submit written comments on the guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Copies of the guideline are available from the CDER Executive Secretariat Staff (HFD–8), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT:

Regarding the guideline: Robert Temple, Center for Drug Evaluation and Research (HFD–100), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4330.

Regarding ICH: Janet Showalter, Office of Health Affairs (HFY–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development.

ICH was organized to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industry Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, FDA, and the U.S. Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

At a meeting held on March 8, 9, and 10, 1993, the ICH Steering Committee agreed that the draft tripartite guideline entitled "Dose-Response Information To Support Drug Registration" should be made available for comment. (The document is the product of the Efficacy Export Working Group of ICH.) Subsequently, the draft guideline was made available for comment by the European Union and Japan, as well as by FDA (see 58 FR 37402, July 9, 1993), in accordance with their consultation procedures. The comments were analyzed and the guideline was revised as necessary. At a meeting held on March 10, 1994, the ICH Steering Committee agreed that this final guideline should be published.

With this notice, FDA is publishing a final guideline entitled "Dose-Response Information To Support Drug Registration." It is applicable to both drugs and biological products. This guideline has been endorsed by all ICH sponsors. The guideline describes the value and uses of dose-response information and the kinds of studies that can obtain such information, and gives specific guidance to manufacturers on the kinds of information they should obtain.

In the past, guidelines have generally been issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidelines to state procedures or standards of general applicability that are not legal requirements but that are acceptable to FDA. The agency is now in the process of revising § 10.90(b). Therefore, the guideline is not being issued under the authority of current § 10.90(b), and it does not create or confer any rights, privileges, or benefits for or on any person, nor does it operate to bind FDA in any way.

As with all of FDA's guidelines, the public is encouraged to submit written comments with new data or other new information pertinent to this guideline. The comments in the docket will be periodically reviewed, and where appropriate, the guideline will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Interested persons may, at any time, submit written comments on the guideline to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except the individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guideline and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The text of the final guideline follows:

Dose-Response Information to Support Drug Registration

I. Introduction

Purpose of Dose-Response Information

Knowledge of the relationships among dose, drug concentration in blood, and clinical response (effectiveness and undesirable effects) is important for the safe and effective use of drugs in individual patients. This information can help identify an appropriate starting dose, the best way to adjust dosage to the needs of a particular patient, and a dose beyond which increases would be unlikely to provide added benefit or would produce unacceptable side effects. Dose-concentration, concentration- and/or dose-response information is used to prepare dosage and administration instructions in product labeling. In addition, knowledge of dose-response may provide an economical approach to global drug development, by enabling multiple regulatory agencies to make approval decisions from a common database.

Historically, drugs have often been initially marketed at what were later recognized as excessive doses (i.e., doses well onto the plateau of the dose-response curve for the desired effect), sometimes with adverse consequences (e.g., hypokalemia and other metabolic disturbances with thiazide-type diuretics in hypertension). This situation has been improved by attempts to find the smallest dose with a discernible useful effect or a maximum dose beyond which no further beneficial effect is seen, but practical study designs do not exist to allow for precise determination of these doses. Further, expanding knowledge indicates that the concepts of minimum effective dose and maximum useful dose do not adequately account for individual differences and do not allow a comparison, at various doses, of both beneficial and undesirable effects. Any given dose provides a mixture of desirable and undesirable effects, with no single dose necessarily optimal for all patients.

Use of Dose-Response Information in Choosing Doses

What is most helpful in choosing the starting dose of a drug is knowing the shape and location of the population (group) average dose-response curve for both desirable and undesirable effects. Selection of dose is best based on that information, together with a judgment about the relative importance of desirable and undesirable effects. For example, a relatively high starting dose (on or near the plateau of the effectiveness dose-response curve) might be recommended for a drug with a large demonstrated separation between its useful and undesirable dose ranges or where a rapidly evolving disease process demands rapid effective intervention. A high starting dose, however, might be a poor choice for a drug with a small demonstrated separation between its useful and undesirable dose ranges. In these cases, the recommended starting dose might best be a low dose exhibiting a clinically important effect in even a fraction of the patient population, with the intent to titrate the dose upwards as long as the drug is well tolerated. Choice of a starting dose might also be affected by potential intersubject variability in pharmacodynamic response to a given blood concentration level, or by anticipated intersubject pharmacokinetic differences, such as could arise from nonlinear kinetics, metabolic polymorphism, or a high potential for pharmacokinetic drug-drug interactions. In these cases, a lower starting dose would protect patients who obtain higher blood concentrations. It is entirely possible that different physicians and even different regulatory authorities, looking at the same data, would make different choices as to the appropriate starting doses, dose-titration steps, and maximum recommended dose, based on different perceptions of risk/benefit relationships. Valid dose response data allow the use of such judgment.

In adjusting the dose in an individual patient after observing the response to an initial dose, what would be most helpful is knowledge of the shape of individual dose-response curves, which is usually not the same as the population (group) average dose-response curve. Study designs that allow estimation of individual dose-response curves could therefore be useful in guiding titration, although experience with such designs and their analysis is very limited.

In utilizing dose-response information, it is important to identify, to the extent possible, factors that lead to differences in pharmacokinetics of drugs among individuals, including demographic factors (e.g., age, gender, race), other diseases (e.g., renal or hepatic failure), diet, concurrent therapies, or individual characteristics (e.g., weight, body habitus, other drugs, metabolic differences).

Uses of Concentration-Response Data

Where a drug can be safely and effectively given only with blood concentration monitoring, the value of concentration-response information is obvious. In other cases, an established concentration-response relationship is often not needed, but may be useful: (1) For ascertaining the magnitude of the clinical consequences of pharmacokinetic differences, such as those due to drug-disease (e.g, renal failure) or drug-drug interactions; or (2) for assessing the effects of the altered pharmacokinetics of new dosage forms (e.g., controlled release formulation) or new dosage regimens without need for additional clinical trial data, where such assessment is permitted by regional regulations. Prospective randomized concentration-response studies are obviously critical to defining concentration monitoring therapeutic "windows," but are also useful when pharmacokinetic variability among patients is great; in that case, a concentration-response relationship may in principle be discerned in a prospective study with a smaller number of subjects than could the dose-response relationship in a standard dose-response study. Note that collection of concentration-response information does not imply that therapeutic blood level monitoring will be needed to administer the drug properly. Concentration-response relationships can be translated into dose-response information. Concentration-response information can also allow selection of doses (based on the range of concentrations they will achieve) most likely to lead to a satisfactory response. Alternatively, if the relationships between concentration and observed effects (e.g., an undesirable or desirable pharmacologic effect) are defined, the drug can be titrated according to patient response without the need for further blood level monitoring.

Problems With Titration Designs

A study design widely used to demonstrate effectiveness utilizes dose titration to some effectiveness or safety endpoint. Such titration designs, without careful analysis, are usually not informative about dose-response relationships. In many studies, there is a tendency to spontaneous improvement over time that is not easily distinguishable from an increased response to higher doses or cumulative drug exposure. This leads to a tendency to choose, as a recommended dose, the highest dose used in such studies that was reasonably well tolerated. Historically, this approach has often led to a dose that was well in excess of what was really necessary, resulting in increased undesirable effects, e.g., to high-dose diuretics used for hypertension. In some cases, notably where an early answer is essential, the titration-to-highest-tolerable-dose approach is acceptable, because it often requires a minimum number of patients. For example, the first marketing of zidovudine (AZT) for treatment of people with acquired immune deficiency syndrome (AIDS) was based on studies at a high dose; later studies showed that lower doses were as effective and far better tolerated. The urgent need for the first effective anti-HIV (human immunodeficiency virus) treatment made the absence of dose-response information at the time of approval reasonable (with the condition that more data were to be obtained after marketing), but in less urgent cases this approach is discouraged.

Interactions Between Dose-Response and Time

The choice of the size of an individual dose is often intertwined with the frequency of dosing. In general, when the dose interval is long compared to the half-life of the drug, attention should be directed to the pharmacodynamic basis for the chosen dosing interval. For example, there might be a comparison of the long dose interval regimen with the same dose in a more divided regimen, looking, where this is feasible, for persistence of desired effect throughout the dose interval and for adverse effects associated with blood level peaks. Within a single dose interval, the dose-response relationships at peak and trough blood levels may differ and the relationship could depend on the dose interval chosen.

Dose-response studies should take time into account in a variety of other ways. The study period at a given dose should be long enough for the full effect to be realized, whether delay is the result of pharmacokinetic or pharmacodynamic factors. The dose-response may also be different for morning versus evening dosing. Similarly, the dose-response relationship during early dosing may not be the same as in the subsequent maintenance dosing period. Responses could also be related to cumulative dose, rather than daily dose, to duration of exposure (e.g., tachyphylaxis, tolerance, or hysteresis) or to the relationships of dosing to meals.

II. Obtaining Dose-Response Information

Dose-Response Assessment Should Be an Integral Part of Drug Development

Assessment of dose-response should be an integral component of drug development with studies designed to assess dose-response an inherent part of establishing the safety and effectiveness of the drug. If development of dose-response information is built into the development process it can usually be accomplished with no loss of time and minimal extra effort compared to development plans that ignore dose-response.

Studies in Life-Threatening Diseases

In particular therapeutic areas, different therapeutic and investigational behaviors

have evolved; these affect the kinds of studies typically carried out. Parallel dose-response study designs with placebo, or placebo-controlled titration study designs (very effective designs, typically used in studies of angina, depression, hypertension, etc.) would not be acceptable in the study of some conditions, such as life-threatening infections or potentially curable tumors, at least if there were effective treatments known. Moreover, because in those therapeutic areas considerable toxicity could be accepted, relatively high doses of drugs are usually chosen to achieve the greatest possible beneficial effect rapidly. This approach may lead to recommended doses that deprive some patients of the potential benefit of a drug by inducing toxicity that leads to cessation of therapy. On the other hand, use of low, possibly subeffective, doses, or of titration to desired effect may be unacceptable, as an initial failure in these cases may represent an opportunity for cure forever lost.

Nonetheless, even for life-threatening diseases, drug developers should always be weighing the gains and disadvantages of varying regimens and considering how best to choose dose, dose-interval and dose-escalation steps. Even in indications involving life-threatening diseases, the highest tolerated dose, or the dose with the largest effect on a surrogate marker will not always be the optimal dose. Where only a single dose is studied, blood concentration data, which will almost always show considerable individual variability due to pharmacokinetic differences, may retrospectively give clues to possible concentration-response relationships.

Use of just a single dose has been typical of large-scale intervention studies (e.g., post-myocardial infarction studies) because of the large sample sizes needed. In planning an intervention study, the potential advantages of studying more than a single dose should be considered. In some cases, it may be possible to simplify the study by collecting less information on each patient, allowing study of a larger population treated with several doses without significant increase in costs.

Regulatory Considerations When Dose-Response Data Are Imperfect

Even well-laid plans are not invariably successful. An otherwise well-designed dose-response study may have utilized doses that were too high, or too close together, so that all appear equivalent (albeit superior to placebo). In that case, there is the possibility that the lowest dose studied is still greater than needed to exert the drug's maximum effect. Nonetheless, an acceptable balance of observed undesired effects and beneficial effects might make marketing at one of the doses studied reasonable. This decision would be easiest, of course, if the drug had special value, but even if it did not, in light of the studies that partly defined the proper dose range, further dose-finding might be pursued in the postmarketing period. Similarly, although seeking dose response data should be a goal of every development program, approval based on data from studies using a fixed single dose or a defined dose range (but without valid dose response information) might be appropriate where benefit from a new therapy in treating or preventing a serious disease is clear.

Examining the Entire Database for Dose-Response Information

In addition to seeking dose-response information from studies specifically designed to provide it, the entire database should be examined intensively for possible dose-response effects. The limitations imposed by certain study design features should, of course, be appreciated. For example, many studies titrate the dose upward for safety reasons. As most side effects of drugs occur early and may disappear with continued treatment, this can result in a spuriously higher rate of undesirable effects at the lower doses. Similarly, in studies where patients are titrated to a desired response, those patients relatively unresponsive to the drug are more likely to receive the higher dose, giving an apparent, but misleading, inverted "U-shaped" dose-response curve. Despite such limitations, clinical data from all sources should be analyzed for dose-related effects using multivariate or other approaches, even if the analyses can yield principally hypotheses, not definitive conclusions. For example, an inverse relation of effect to weight or creatinine clearance could reflect a dose-related covariate relationship. If pharmacokinetic screening (obtaining a small number of steady-state blood concentration measurements in most Phase 2 and Phase 3 study patients) is carried out, or if other approaches to obtaining drug concentrations during trials are used, a relation of effects (desirable or undesirable) to blood concentrations may be discerned. The relationship may by itself be a persuasive description of concentration-response or may suggest further study.

III. Study Designs for Assessing Dose Response

General

The choice of study design and study population in dose-response trials will depend on the phase of development, the therapeutic indication under investigation, and the severity of the disease in the patient population of interest. For example, the lack of appropriate salvage therapy for life-threatening or serious conditions with irreversible outcomes may ethically preclude conduct of studies at doses below the maximum tolerated dose. A homogeneous patient population will generally allow achievement of study objectives with small numbers of subjects given each treatment. On the other hand, larger, more diverse populations allow detection of potentially important covariate effects.

In general, useful dose-response information is best obtained from trials specifically designed to compare several doses. A comparison of results from two or more controlled trials with single fixed doses might sometimes be informative, e.g., if control groups were similar, although even in that case, the many across-study differences that occur in separate trials usually make this approach unsatisfactory. It is also possible in some cases to derive, retrospectively, blood concentration-response relationships from the variable concentrations attained in a fixed-dose trial. While these analyses are potentially confounded by disease severity or other patient factors, the information can be useful and can guide subsequent studies. Conducting dose-response studies at an early stage of clinical development may reduce the number of failed Phase 3 trials, speeding the drug development process and conserving development resources.

Pharmacokinetic information can be used to choose doses that ensure adequate spread of attained concentration-response values and diminish or eliminate overlap between attained concentrations in dose-response trials. For drugs with high pharmacokinetic variability, a greater spread of doses could be chosen. Alternatively, the dosing groups could be individualized by adjusting for pharmacokinetic covariates (e.g., correction for weight, lean body mass, or renal function) or a concentration-controlled study could be carried out.

As a practical matter, valid dose-response data can be obtained more readily when the response is measured by a continuous or categorical variable, is relatively rapidly obtained after therapy is started, and is rapidly dissipated after therapy is stopped (e.g., blood pressure, analgesia, bronchodilation). In this case, a wider range of study designs can be used and relatively small, simple studies can give useful information. Placebo-controlled individual subject titration designs typical of many early drug development studies, for example, properly conducted and analyzed (quantitative analysis that models and estimates the population and individual dose-response relationships), can give guidance for more definitive parallel, fixed-dose, dose-response studies or may be definitive on their own.

In contrast, when the study endpoint or adverse effect is delayed, persistent, or irreversible (e.g., stroke or heart attack prevention, asthma prophylaxis, arthritis treatments with late onset response, survival in cancer, treatment of depression), titration and simultaneous assessment of response is usually not possible, and the parallel dose-response study is usually needed. The parallel dose-response study also offers protection against missing an effective dose because of an inverted "U-shaped" (umbrella or bell-shaped) dose-response curve, where higher doses are less effective than lower doses, a response that can occur, for example, with mixed agonist-antagonists.

Trials intended to evaluate dose- or concentration-response should be well-controlled, using randomization and blinding (unless blinding is unnecessary or impossible) to assure comparability of treatment groups and to minimize potential patient, investigator, and analyst bias, and should be of adequate size.

It is important to choose as wide a range of doses as is compatible with practicality and patient safety to discern clinically meaningful differences. This is especially important where there are no pharmacologic or plausible surrogate endpoints to give initial guidance as to dose.

Specific Trial Designs

A number of specific study designs can be used to assess dose-response. The same approaches can also be used to measure concentration-response relationships. Although not intended to be an exhaustive list, the following approaches have been shown to be useful ways of deriving valid dose-response information. Some designs outlined in this guidance are better established than others, but all are worthy of consideration. These designs can be applied to the study of established clinical endpoints or surrogate endpoints.

1. Parallel Dose-Response

Randomization to several fixed-dose groups (the randomized parallel dose-response study) is simple in concept and is a design that has had extensive use and considerable success. The fixed dose is the final or maintenance dose; patients may be placed immediately on that dose or titrated gradually (in a scheduled "forced" titration) to it if that seems safer. In either case, the final dose should be maintained for a time adequate to allow the dose-response comparison. Although including a placebo group in dose-response studies is desirable, it is not theoretically necessary in all cases; a positive slope, even without a placebo group, provides evidence of a drug effect. To measure the absolute size of the drug effect, however, a placebo or comparator with very limited effect on the endpoint of interest is usually needed. Moreover, because a difference between drug groups and placebo unequivocally shows effectiveness, inclusion of a placebo group can salvage, in part, a study that used doses that were all too high and, therefore, showed no dose-response slope, by showing that all doses were superior to placebo. In principle, being able to detect a statistically significant difference in pair-wise comparisons between doses is not necessary if a statistically significant trend (upward slope) across doses can be established using all the data. It should be demonstrated, however, that the lowest dose(s) tested, if it is to be recommended, has a statistically significant and clinically meaningful effect.

The parallel dose-response study gives group mean (population-average) dose-response, not the distribution or shape of individual dose-response curves.

It is all too common to discover, at the end of a parallel dose-response study, that all doses were too high (on the plateau of the dose-response curve), or that doses did not go high enough. A formally planned interim analysis (or other multi-stage design) might detect such a problem and allow study of the proper dose range.

As with any placebo-controlled trial, it may also be useful to include one or more doses of an active drug control. Inclusion of both placebo and active control groups allows assessment of "assay sensitivity," permitting a distinction between an ineffective drug and an "ineffective" (null, no test) study. Comparison of dose-response curves for test and control drugs, not yet a common design, may also represent a more valid and informative comparative effectiveness/safety study than comparison of single doses of the two agents.

The factorial trial is a special case of the parallel dose-response study to be considered when combination therapy is being evaluated. It is particularly useful when both agents are intended to affect the same response variable (a diuretic and another anti-hypertensive, for example), or when one drug is intended to mitigate the side effects of the other. These studies can show effectiveness (a contribution of each component of the combination) and, in addition, provide dosing information for the drugs used alone and together.

A factorial trial employs a parallel fixed-dose design with a range of doses of each separate drug and some or all combinations of these doses. The sample size need not be large enough to distinguish single cells from each other in pair-wise comparisons because all of the data can be used to derive dose-response relationships for the single agents and combinations, i.e., a dose-response surface. These trials, therefore, can be of moderate size. The doses and combinations that could be approved for marketing might not be limited to the actual doses studied but might include doses and combinations in between those studied. There may be some exceptions to the ability to rely entirely on the response surface analysis in choosing dose(s). At the low end of the dose range, if the doses used are lower than the recognized effective doses of the single agents, it would ordinarily be important to have adequate evidence that these can be distinguished from placebo in a pair-wise comparison. One way to do this in the factorial study is to have the lowest dose combination and placebo groups be somewhat larger than other groups; another is to have a separate study of the low-dose combination. Also, at the high end of the dose range, it may be necessary to confirm the contribution of each component to the overall effect.

2. Cross-over Dose-Response

A randomized multiple cross-over study of different doses can be successful if drug effect develops rapidly and patients return to baseline conditions quickly after cessation of therapy, if responses are not irreversible (cure, death), and if patients have reasonably stable disease. This design suffers, however, from the potential problems of all cross-over studies: It can have analytic problems if there are many treatment withdrawals; it can be quite long in duration for an individual patient; and there is often uncertainty about carry-over effects (longer treatment periods may minimize this problem), baseline comparability after the first period, and period-by-treatment interactions. The length of the trial can be reduced by approaches that do not require all patients to receive each dose, such as balanced incomplete block designs.

The advantages of the design are that each individual receives several different doses so that the distribution of individual dose-response curves may be estimated, as well as the population average curve, and that, compared to a parallel design, fewer patients may be needed. Also, in contrast to titration designs, dose and time are not confounded and carry-over effects are better assessed.

3. Forced Titration

A forced titration study, where all patients move through a series of rising doses, is similar in concept and limitations to a randomized multiple cross-over dose-response study, except that assignment to dose levels is ordered, not random. If most patients complete all doses, and if the study is controlled with a parallel placebo group, the forced titration study allows a series of comparisons of an entire randomized group given several doses of drug with a concurrent placebo, just as the parallel fixed-dose trial does. A critical disadvantage is that, by itself, this study design cannot distinguish response to increased dose from response to increased time on drug therapy or a cumulative drug dosage effect. It is therefore an unsatisfactory design when response is delayed, unless treatment at each dose is prolonged. Even where the time until development of effect is known to be short (from other data), this design gives poor information on adverse effects, many of which have time-dependent characteristics. A tendency toward spontaneous improvement, a very common circumstance, will be revealed by the placebo group, but is nonetheless a problem for this design, as over time, the higher doses may find little room to show an increased effect. This design can give a reasonable first approximation of both population-average dose response and the distribution of individual dose-response relationships if the cumulative (time-dependent) drug effect is minimal and the number of treatment withdrawals is not excessive. Compared to a parallel dose-response study, this design may use fewer patients, and by extending the study duration, can be used to investigate a wide range of doses, again making it a reasonable first study. With a concurrent placebo group this design can provide clear evidence of effectiveness, and may be especially valuable in helping choose doses for a parallel dose-response study.

4. Optional Titration (Placebo-Controlled Titration to Endpoint)

In this design, patients are titrated until they reach a well-characterized favorable or unfavorable response, defined by dosing rules expressed in the protocol. This approach is most applicable to conditions where the response is reasonably prompt and is not an irreversible event, such as stroke or death. A crude analysis of such studies, e.g., comparing the effects in the subgroups of patients titrated to various dosages, often gives a misleading inverted "U-shaped" curve, as only poor responders are titrated to the highest dose. However, more sophisticated statistical analytical approaches that correct for this occurrence, by modeling and estimating the population and individual dose-response relationships, appear to allow calculation of valid dose-response information. Experience in deriving valid dose-response information in this fashion is still limited. It is important, in this design, to maintain a concurrent placebo group to correct for spontaneous changes, investigator expectations, etc. Like other designs that use several doses in the same patient, this design may use fewer patients than a parallel fixed-dose study of similar

statistical power and can provide both population average and individual dose-response information. The design does, however, risk confounding of time and dose effects and would be expected to have particular problems in finding dose-response relationships for adverse effects. Like the forced titration design, it can be used to study a wide dose range and, with a concurrent placebo group, can provide clear evidence of effectiveness. It too may be especially valuable as an early study to identify doses for a definitive parallel study.

IV. Guidance and Advice

1. Dose response data are desirable for almost all new chemical entities entering the market. These data should be derived from study designs that are sound and scientifically based; a variety of different designs can give valid information. The studies should be well-controlled, using accepted approaches to minimize bias. In addition to carrying out formal dose-response studies, sponsors should examine the entire database for possible dose-response information.

2. The information obtained through targeted studies and analyses of the entire database should be used by the sponsor to:

a. Identify a reasonable starting dose, ideally with specific adjustments (or a firm basis for believing none is needed) for patient size, gender, age, concomitant illness, and concomitant therapy, reflecting an integration of what is known about pharmacokinetic and pharmacodynamic variability. Depending on circumstances (the disease, the drug's toxicity), the starting dose may range from a low dose with some useful effect to a dose that is at or near the full-effect dose.

b. Identify reasonable, response-guided titration steps, and the interval at which they should be taken, again with appropriate adjustments for patient characteristics. These steps would be based either on the shape of the typical individual's dose-effect curves (for both desirable and undesirable effects), if individual dose-response data were available, or if not, on the shape of the population (group)-average dose-response, and the time needed to detect a change in these effects. It should be noted that methodology for finding the population (group)-average dose-response, at present, is better established than is methodology for finding individual dose-response relationships.

c. Identify a dose, or a response (desirable or undesirable), beyond which titration should not ordinarily be attempted because of a lack of further benefit or an unacceptable increase in undesirable effects.

3. It is prudent to carry out dose-ranging or concentration-response studies early in development as well as in later stages in order to avoid failed Phase 3 studies or accumulation of a database that consists largely of exposures at ineffective or excessive doses. The endpoints of studies may vary at different stages of drug development. For example, in studying a drug for heart failure, a pharmacodynamic endpoint might be used early (e.g., cardiac output, pulmonary capillary wedge pressure), an intermediate endpoint might be used later (e.g., exercise tolerance, symptoms) and a mortality or irreversible morbidity endpoint might be the final assessment (survival, new infarction). It should be anticipated that the dose response for these endpoints may be different. Of course, the choice of endpoints that must be studied for marketing approval will depend on the specific situation.

4. A widely used, successful, and acceptable design, but not the only study design for obtaining population average dose-response data, is the randomized parallel, dose-response study with three or more dosage levels, one of which may be zero (placebo). From such a trial, if dose levels are well chosen, the relationship of drug dosage, or drug concentration, to clinical beneficial or undesirable effects can be defined.

Several dose levels are needed, at least two in addition to placebo, but in general, study of more than the minimum number of doses is desirable. A single dose level of drug versus placebo allows a test of the null hypothesis of no difference between drug and placebo, but cannot define the dose-response relationship. Similarly, although a linear relationship can be derived from the response to two active doses (without placebo), this approximation is usually not sufficiently informative. Study designs usually should emphasize elucidation of the dose-response function, not individual pair-wise comparisons. If a particular point on the curve, e.g., whether a certain low dose is useful, becomes an issue, it should be studied separately.

5. Dose-response data for both beneficial and undesirable effects may provide information that allows approval of a range of doses that encompass an appropriate benefit-to-risk ratio. A well-controlled dose-response study is also a study that can serve as primary evidence of effectiveness.

6. Regulatory agencies and drug developers should be open to new approaches and to the concept of reasoned and well-documented exploratory data analysis of existing or future databases in search of dose-response data. Agencies should also be open to the use of various statistical and pharmacometric techniques such as Bayesian and population methods, modeling, and pharmacokinetic-pharmacodynamic approaches. However, these approaches should not subvert the requirement for dose-response data from prospective, randomized, multi-dose-level clinical trials. Post-hoc exploratory data analysis in search of dose-response information from databases generated to meet other objectives will often generate new hypotheses, but will only occasionally provide definitive assessment of dose-response relationships.

A variety of data analytical techniques, including increased use of retrospective population-type analyses, and novel designs (e.g., sequential designs) may help define the dose-response relationship. For example, fixed-dose designs can be reanalyzed as a continuum of dose levels if doses are refigured on a milligram per kilogram (mg/kg) basis, or adjusted for renal function, lean body mass, etc. Similarly, blood levels taken during a dose-response study may allow estimates of concentration-response relationships. Adjustment of drug exposure levels might be made on the basis of reliable information on drug-taking compliance. In all of these cases, one should always be conscious of confounding, i.e., the presence of a factor that alters both the refigured dose and response or that alters both blood level and response, compliance and response, etc.

7. Dose-response data should be explored for possible differences in subsets based on demographic characteristics, such as age, gender, or race. To do this, it is important to know whether there are pharmacokinetic differences among these groups, e.g., due to metabolic differences, differences in body habitus, or composition, etc.

8. Approval decisions are based on a consideration of the totality of information on a drug. Although dose-response information should be available, depending on the kind and degree of effectiveness shown, imperfections in the database may be acceptable with the expectation that further studies will be carried out after approval. Thus, informative dose-response data, like information on responses in special populations, on long-term use, on potential drug-drug and drug-disease interactions, is expected, but might, in the face of a major therapeutic benefit or urgent need, or very low levels of observed toxicity, become a deferred requirement.

Dated: October 25, 1994.

William K. Hubbard,

Interim Deputy Commissioner for Policy.

[FR Doc. 94–27723; Filed 11–8–94; 8:45 am]

BILLING CODE 4160–01–F

federal register

Wednesday
November 9, 1994

Part VII

The President

Presidential Determination 95–2—Determination Pursuant to Section 523 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1995 (Public Law 103–306)

Proclamation 6755—National Women Veterans Recognition Week

Proclamation 6756—National American Indian Heritage Month

Federal Register
Vol. 59, No. 216
Wednesday, November 9, 1994

Presidential Documents

Title 3—

The President

Presidential Determination No. 95–2 of November 1, 1994

Determination Pursuant to Section 523 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1995 (Public Law 103–306)

Memorandum for the Secretary of State

Pursuant to section 523 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1995 (Act) (Public Law 103–306), I hereby certify that withholding funds from international financial institutions and other international organizations and programs, pursuant to the limitation contained therein prohibiting the obligation of funds appropriated or otherwise made available pursuant to this Act to finance indirectly any assistance or reparations to certain specified countries, is contrary to the national interest.

You are authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE
Washington, November 1, 1994.

[FR Doc. 94–27936
Filed 11–8–94; 9:34 am]
Billing code 4710–10–M

Presidential Documents

Proclamation 6755 of November 5, 1994

National Women Veterans Recognition Week, 1994

By the President of the United States of America

A Proclamation

During the American Civil War, both Union and Confederate forces relied on the skill and courage of women. Thousands volunteered as nurses; others spied on the enemy; many disguised themselves as men and stood to fight in battle. As our Nation has grown, so too has the number of women veterans. From Europe to Korea to the Persian Gulf, their knowledge and leadership have been essential in maintaining the unparalleled effectiveness of every branch of the United States Armed Forces.

Today, American women share the responsibility of defending the cause of freedom around the world. Time and again, women have demonstrated their professionalism in peacetime and have proven their mettle in combat. Their heroism, their bravery, and their tireless devotion to duty have helped to ensure all Americans the protection of the greatest fighting force the world has ever known.

America is blessed with more than 1 million living women veterans. In myriad different roles, they have brought honor to our country and strength to our cause. As more and more women answer the call to military service, we salute the many proud veterans who served before them and paved the way. Our veterans exemplify the spirit of patriotism and service that has characterized American women in uniform throughout our Nation's history.

In respect for and recognition of these distinguished citizens, the Congress, by Public Law 103–148, has designated the week of November 6, 1994, through November 12, 1994, as "National Women Veterans Recognition Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the week of November 6, 1994, through November 12, 1994, as National Women Veterans Recognition Week. I encourage all Americans to join in acknowledging the tremendous contributions and sacrifices of these noble veterans with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of November, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 94–27937
Filed 11–8–94; 9:35 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 6756 of November 5, 1994

National American Indian Heritage Month, 1994

By the President of the United States of America

A Proclamation

There is a yearning among American people for a sense of community, a sense of belonging, a sense of shared beliefs and common goals. Today, across the country, we are searching for ways to come together in friendship and mutual respect. As we look toward the promise of the 21st century, it is important that we reflect on our shared heritage and on the valuable lessons history teaches.

At this momentous time, we pay tribute to this country's first peoples—the American Indians. We celebrate the innumerable contributions that generations of American Indians and Alaska Natives have made to our country and to our world. Before there were colonists on these shores, long before our Nation's founders drafted the U.S. Constitution, American Indians had established powerful civilizations and rich and thriving cultures. Government, art, music, spirituality, and a deep and abiding respect for the natural environment—all of these are enduring traditions of the American Indians.

Native peoples were the first environmentalists, understanding that air, water, plants, and animals must be treated with respect if they are to remain available for generations to come. American Indians taught the first European settlers how to survive in new surroundings and helped them to explore uncharted wilderness. Native peoples have represented this country in every war, from the American Revolution to the Persian Gulf, and are proud members of every branch of the U.S. Armed Forces. Artists such as R. C. Gorman and Fritz Scholder and writers such as Louise Erdrich and N. Scott Momaday have made remarkable contributions to art and literature.

The relationship between the U.S. Government and the American Indians has not been without controversy. As we look back on our history, we must acknowledge often profound mistakes. But we also must look to and plan for a future of cooperation and respect. With the recent passage of the Indian self-governance and self-determination amendments of 1994, we celebrate the government-to-government relationship that exists between the Indian tribes and the United States. This legislation reaffirms and strengthens the political ties between all of the nations of this land.

To acknowledge the varied and inestimable contributions of the native peoples and to celebrate this proud legacy, the Congress, by House Joint Resolution 271, has designated November 1994 as "National American Indian Heritage Month" and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim November 1994 as National American Indian Heritage Month. I urge all Americans, as well as their elected representatives at the Federal, State, and local levels, to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of November, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 94-27938
Filed 11-8-94; 9:36 am]
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Reader Aids

Federal Register

Vol. 59, No. 216

Wednesday, November 9, 1994

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection announcement line	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
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FEDERAL REGISTER PAGES AND DATES, NOVEMBER

54513–54786.....1
54787–55018.....2
55019–55198.....3
55199–55328.....4
55329–55570.....7
55571–55806.....8
55807–55984.....9

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6752.....54513
6753.....55329
6754.....55805
6755.....55981
6756.....55983
March 21, 1917
(Revoked in part by PLO 7098).....55371
Executive Orders:
12710 (See Treasury Department final rule of October 11).....55209
12933.....54949
Administrative Orders:
Memorandums:
October 27, 1994.....54515
Notices:
October 12, 1994.....54785
Presidential Determinations:
No. 95–2 of November 1, 1994.....55979

5 CFR

532.....54787
576.....55807
1600.....55331
1605.....55331
1630.....55331
1631.....55331
1632.....55331
1650.....55331
Proposed Rules
211.....55212
230.....55212
300.....55212
301.....55212
307.....55212
310.....55212
316.....55212
330.....55212
333.....55212
339.....55212
340.....55212
351.....55212
353.....55212
831.....55211
842.....55211
930.....55212

7 CFR

905.....55332, 55571
927.....55333
928.....55334
929.....55336
931.....55337
932.....55338
934.....55338
944.....55571
955.....55019
966.....55020
997.....55808
1902.....54787
1941.....54787
1942.....54787
1943.....54787
1944.....54787
1945.....54787
1951.....54789
Proposed Rules:
68.....55067
1011.....55377
1030.....54952
1065.....54952
1068.....54952
1076.....54952
1079.....54952
1413.....55378

8 CFR

214.....55910

9 CFR

94.....55021

10 CFR

Proposed Rules:
20.....55224
35.....55068
50.....54843
55.....54843
73.....54843

12 CFR

5.....54789
16.....54789
211.....55026
225.....54801, 54805
262.....54805
701.....54517
Proposed Rules:
900.....55379

14 CFR

39.....54517, 55199, 55203, 55341
71.....55029, 55810
73.....55030
97.....55205, 55206
121.....55208
125.....55208
135.....55208
Proposed Rules:
23.....55225
35.....55070
39.....54535, 54847, 54849, 55380, 55382, 55383, 55595

16 CFR

410.....54809

17 CFR

240.....54812, 55006, 55342

249.....55342
250.....55573
405.....55910

Proposed Rules:
228.....55385
229.....55385
230.....55385
239.....55385
240.....55014, 55385
274.....55385

18 CFR

2.....55031
11.....54815

Proposed Rules:
Ch. I.....54851

19 CFR

12.....54817

Proposed Rules:
10.....54537

20 CFR

Proposed Rules:
638.....54539

21 CFR

522.....54517
558.....54518

Proposed Rules:
54.....55071
182.....55072
312.....55071
314.....55071
320.....55071
330.....55071
601.....55071
807.....55071
812.....55071
814.....55071
860.....55071
1309.....54949
1313.....54949

22 CFR

40.....55045

24 CFR

Proposed Rules:
38.....54984

25 CFR

Proposed Rules:
1.....55225

27 CFR

Proposed Rules:
9.....55226

28 CFR

Proposed Rules:
524.....54782

29 CFR

1601.....54818
1910.....55208

Proposed Rules:
1926.....54540

30 CFR

Proposed Rules:
Ch. II.....55597
42.....54855
48.....54855
70.....54855
71.....54855
75.....54855
77.....54855
90.....54855
913.....55597

31 CFR

565.....55209

32 CFR

701.....55348

33 CFR

100.....55583
117.....54518
165.....55583
168.....54519

Proposed Rules:
110.....55598
117.....55599, 55601
165.....55602, 55603
181.....55823

34 CFR

690.....54718
691.....54718

36 CFR

701.....55811

40 CFR

52.....54521, 54523, 55045, 55053, 55059, 55368, 55584, 55585, 55586
70.....55813
82.....55912
180.....55589
271.....55368

Proposed Rules:
52.....54540, 54544, 54866, 55072, 55400, 55824
63.....54869
70.....54869
80.....54678
81.....55053, 55059
89.....55930
91.....55930
180.....54818, 54821, 54822, 54824, 54825, 54827, 54869, 54871, 54872, 55605
186.....54829
264.....55778
265.....55778
270.....55778
271.....55322, 55778
300.....54830, 55606
721.....54874
745.....54984
763.....54746

41 CFR

101–6.....54524

43 CFR

Public Land Orders:
7098.....55371
7099.....55371
7100.....55820
7101.....55821

Proposed Rules:
11.....54877

44 CFR

67.....55060, 55590

Proposed Rules:
67.....55607

45 CFR

1180.....55592

46 CFR

Proposed Rules:
171.....55232
514.....55826
540.....54878
552.....55232
580.....55826
581.....55826

47 CFR

2.....55372
15.....55372
24.....55209, 55372
73.....54532, 54533, 55374, 55375, 55593, 55594
97.....54831

Proposed Rules:
68.....54878
73.....54545, 55402
97.....55828

48 CFR

9903.....55746
9905.....55746

49 CFR

171.....55162
173.....55162
178.....55162
180.....55162
571.....54835

Proposed Rules:
571.....54881, 55073
580.....55404

50 CFR

17.....54840
20.....55531
32.....55182, 55190, 55194
285.....55821
625.....55821
630.....55060
638.....54841
672.....55066
675.....54842, 55822
678.....55066

Proposed Rules:
23.....55235, 55617
32.....55074
654.....55405
672.....54883
675.....54883, 55076

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List November 7, 1994

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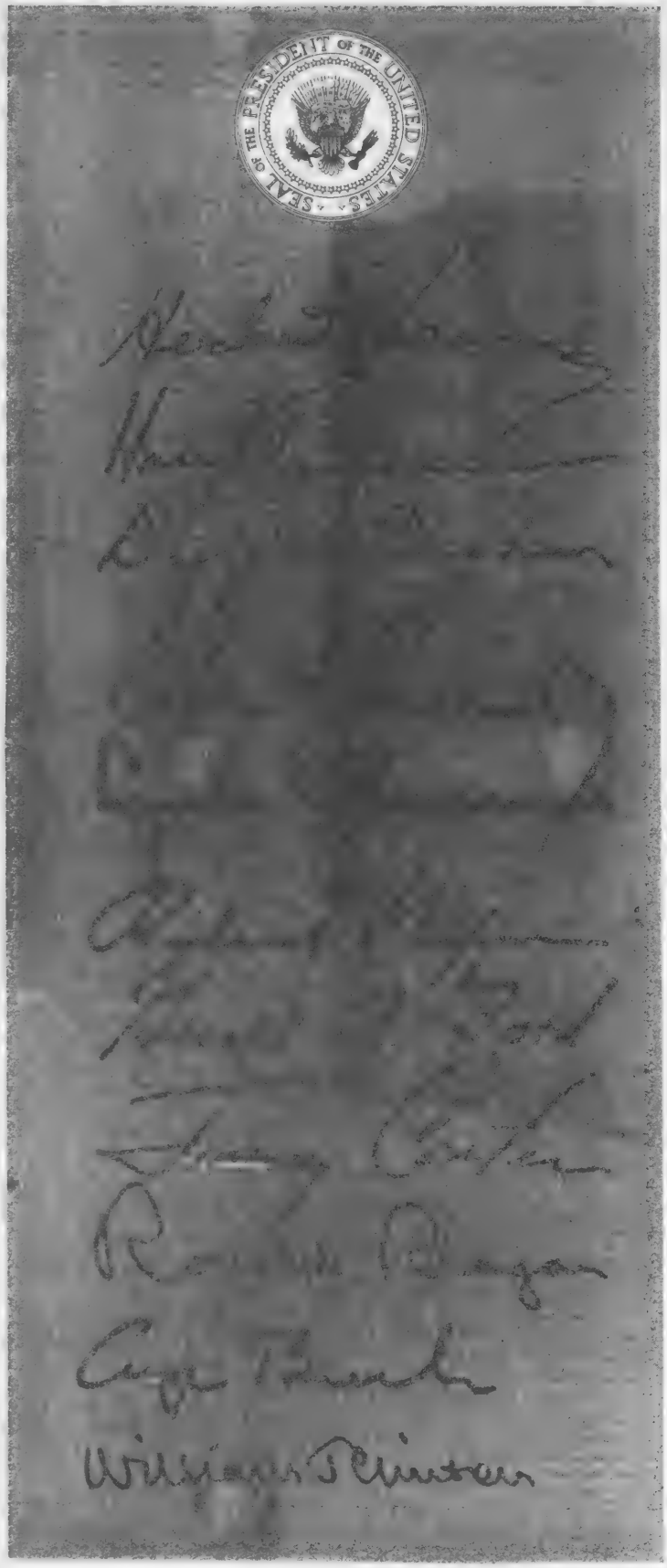

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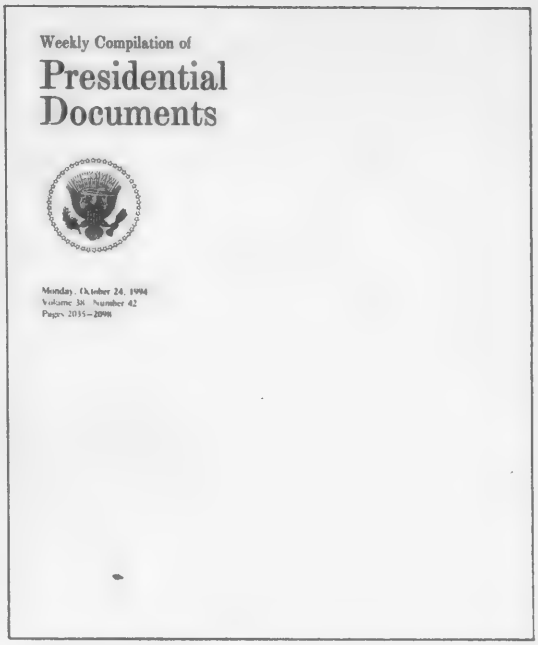

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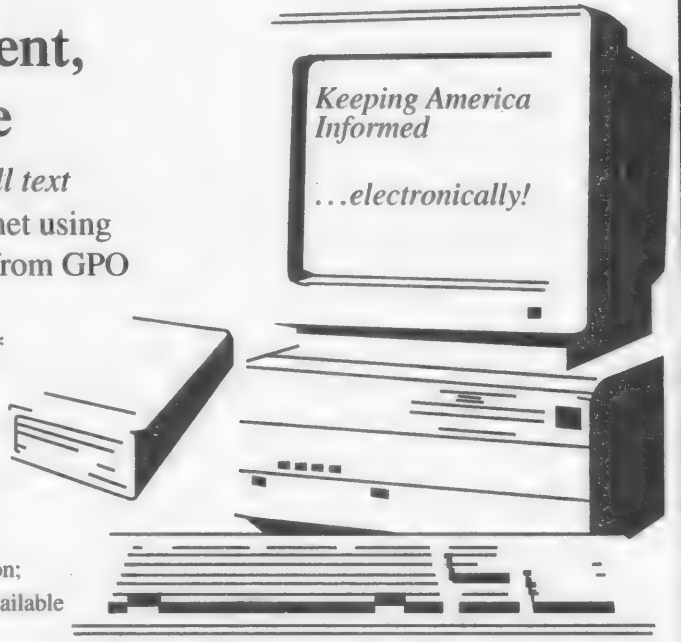

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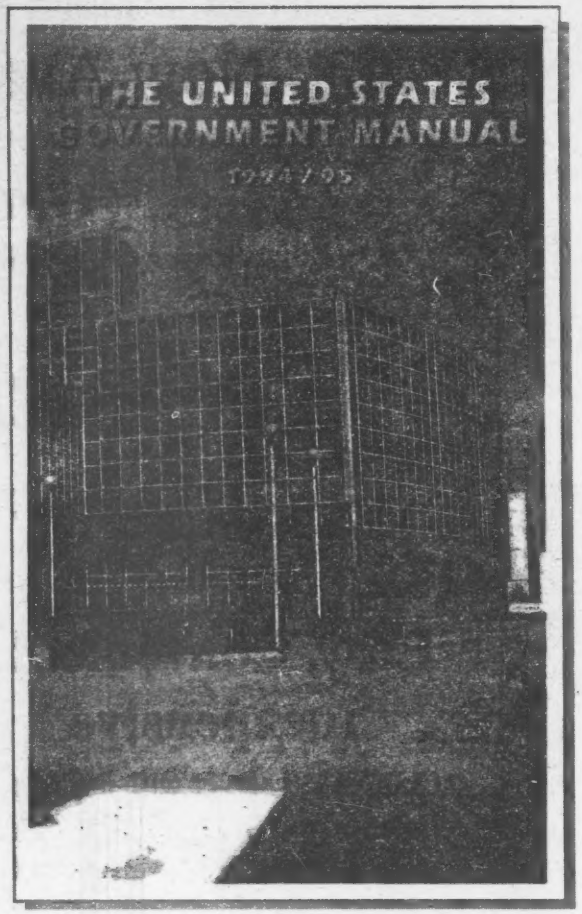

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